(29,508)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 958.

GEORGE F. SHAFER, AS ATTORNEY GENERAL OF THE STATE OF NORTH DAKOTA, AND FRANK MILHOLLAN *ET AL.*, AS THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH DAKOTA, APPELLANTS,

vs.

FARMERS GRAIN COMPANY OF EMBDEN, FARMERS ELEVATOR COMPANY OF WIMBLEDON, BERWICK FARMERS GRAIN COMPANY, *ET AL.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NORTH DAKOTA.

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1 **In District Court of the United States, District of North Dakota, Southeastern Division.**

Caption.

FARMERS GRAIN COMPANY OF EMBDEN, FARMERS ELEVATOR Company of Wimbledon, Berwick Farmers Grain Company, Grandin Farmers Grain Company, Hampden Farmers Elevator Company, Walhalla Cooperative Elevator Company, Glenfield Cooperative Association, Farmers Cooperative Elevator Company of Cando, Benedict Farmers Cooperative Elevator Company, Farmers Elevator & Mercantile Company of Rogers, Cayuga Farmers Elevator Company, Lybeck Grain Company, I. L. Berge Elevator Company, Regan & Lynnes Elevator Company, Kensal Farmers Elevator Company, Chamley Bros. Grain Company, Gwinner Farmers Grain Company, Freeborn Elevator Company, Hazen Grain Company, Eldridge Farmers Elevator Company, Carrington Grain Company, Pingree Grain Company, Farmers Grain Company, Cargill Elevator Company, Occident Elevator Company, corporations organized and existing under and by virtue of the laws of the State of North Dakota; W. M. Noddings, doing business as the Noddings Grain Company; L. L. Kruchten, doing business as the Perth Elevator Company; J. C. Smith, doing business as Alexander Grain Company; F. M. Cook, doing business as the Woodworth Grain Company; John A. Aird, Alexander Marchanke, doing business as the Independent Elevator Company; Robert Fleming, James Whelan, Pierce Blewett, doing business as the Star Elevator Company; Hans Neilson, doing business as the Elk Valley Farms Company; E. H. Ray, Arnold Bros., C. H. Sheldon, Louis Gjere, doing business as the Cando Grain Company; Schilling & Kruger, O. B. Sorenson, V. W. Steele, doing business as Jud Elevator Company; John Southall, J. A. Frank, H. C. Sorenson, doing business as the Independent Elevator Company; John Bibelheimer, doing business as the Washburn Grain Company; N. O. Parsons, doing business as the Independent Grain Company; A. C. Andrews, doing business as the Andrews Grain Company, all in the State of North Dakota, and Acme Grain Company, *all in the State of North Dakota, and Acme Grain Company,* Atlantic Elevator Company, George C. Bagley Elevator Company, Columbia Elevator Company, Dodge Elevator Company, Empire Elevator Company, Great Western Grain Company, Imperial Elevator Company, Miller Elevator Company, Minnekota Elevator Company, Monarch Elevator Company, National Elevator Company, Northland Elevator Company, Osborne-McMillan Elevator Company, Powers Elevator Company, Rugby Elevator Company, St. Anthony & Dakota Elevator Company, Victoria Elevator Company, Winter-Truesdell-Ames Com-

pany, Woodworth Elevator Company, and International Elevator Company, corporations organized and existing under and by virtue of the Laws of the State of Minnesota, Plaintiffs,

vs.

GEORGE F. SHAFER, as Attorney General of the State of North Dakota, and Frank Milhollan, C. W. McDonnell and Fay Harding, as the Board of Railroad Commissioners of the State of North Dakota, Defendants.

2 Pleas Before the Honorable Wm. S. Kenyon, United States Circuit Judge, Honorable Jas. D. Ellicott, United States District Judge, and Honorable J. W. Woodrough, United States District Judge.

Be it remembered that on the 6th day of December, A. D. 1922, a Bill of Complaint was filed in this case, which bill of complaint is in words and figures following, to-wit:

3 In United States District Court.

(Title of Case.)

Bill of Complaint.

[Filed Dec. 6, 1922.]

To the Honorable the Judges of the District Court of the United States for the District of North Dakota:

The plaintiffs above named bring this, their Bill of Complaint, against the defendants above named, and complain and state as follows:

I.

That the plaintiffs, the Farmers Grain Company of Embden, Farmers Elevator Company of Wimbledon, the Berwick Farmers Grain Company, the Grandin Farmers Grain Company, the Hampden Farmers Elevator Company, the Walhalla Cooperative Elevator Company, the Glenfield Cooperative Association, the Farmers Cooperative Elevator Company of Cando, the Benedict Farmers Cooperative Elevator Company, the Farmers Elevator & Mercantile Company of Rogers, and the Cayuga Farmers Elevator Company are corporations organized and existing under the Laws of the State of North Dakota; that they each own and operate elevators at a station in North Dakota.

That each of the plaintiffs in this Paragraph I is a farmers cooperative elevator company; that it purchases and assembles the grain of its stockholders and of others at the station where its elevator is located, transports the same by railroad to the terminal markets beyond the State of North Dakota, principally to the Minnesota

terminal markets at Minneapolis and Duluth, and there sells the same; that it distributes as patronage dividends any surplus arising from such transactions; that it retains no profits from such transactions; that its elevator is necessary for the transaction of its said business and is used solely by it as a facility in carrying on such business.

II.

That W. M. Noddings, doing business as the Noddings Grain Company, owns and operates an elevator at Napoleon; L. L. Kruchten, doing business as the Perth Elevator, owns and operates an elevator at Perth; that J. C. Smith, doing business as Alexander Grain Company, owns and operates an elevator at Alexander, North Dakota; F. M. Cook, doing business as the Woodworth Grain Company, owns and operates an elevator at Woodworth; John A. Aird owns
4 and operates an elevator at Lawton; Alexander Harchanko, doing business as the Independent Elevator Company, owns and operates an elevator at Benedict; Robert Fleming owns and operates an elevator at Dresden; James Whelan owns and operates an elevator at St. Thomas; Pierce Blewett, doing business as the Star Elevator Company, owns and operates eleven elevators at different stations in the State of North Dakota; Hans Neilson, doing business as the Elk Valley Farms Company, owns and operates an elevator at Larimore; E. H. Ray owns and operates an elevator at Surrey; Arnold Bros. own and operate an elevator at Berwick; C. H. Sheldon owns and operates an elevator at Minnewaukan; Louis Gjere, doing business as the Cando Grain Company, owns and operates an elevator at Cando; Schilling & Kruger own and operate an elevator at Linton; O. B. Sorenson owns and operates an elevator at Pillsbury; V. W. Steele, doing business as Jud Elevator Company, owns and operates an elevator at Jud, North Dakota; John Southall owns and operates an elevator at Berlin; J. A. Frank owns and operates an elevator at La Moure; H. C. Sorenson, doing business as the Independent Elevator Company, owns and operates an elevator at Balfour; John Bibelheimer, doing business as the Washburn Grain Company, owns and operates an elevator at Washburn; N. O. Parsons, doing business as the Independent Grain Company, owns and operates an elevator at Courtenay; and A. C. Andrews, doing business as the Andrews Grain Company, owns and operates forty-six elevators at different stations; all in the State of North Dakota.

III.

That each of the plaintiffs in this Paragraph III named is a corporation organized and existing under the Laws of the State of North Dakota, and that each owns and operates elevators in said State—Lybeck Grain Company, eleven elevators at different stations; I. L. Berge Elevator Company, seven elevators at different stations; Regan & Lyness Elevator Company, seven elevators at different stations; Kensal Farmers Elevator Company, an elevator at Kensal; Chamley Bros. Grain Company, an elevator at Cooperstown; Gwinner Farmers

Grain Company, an elevator at Gwinner; Freeborn Elevator Company, an elevator at McVille; Hazen Grain Company, an elevator at Hazen; Eldrige Farmers Elevator Company, an elevator at Eldrige; Carrington Grain Company, an elevator at Carrington; Pingree Grain Company, an elevator at Pingree; Farmers Grain Company, eighteen elevators at different stations; Cargill Elevator Company, fifty-six elevators at different stations; Occident Elevator Company, seventy-two elevators at different stations.

IV.

That the plaintiffs named in this Paragraph IV are corporations organized and existing under the Laws of the State of Minnesota, and own and operate elevators in North Dakota at different stations—Acme Grain Company, seventeen elevators; Atlantic Elevator Company, thirty elevators; George C. Bagley Elevator Company, five elevators; Columbia Elevator Company, nine elevators; Dodge Elevator Company, fifteen elevators; Empire Elevator Company, eleven elevators; Great Western Grain Company, forty elevators; Imperial Elevator Company, twenty-two elevators; Miller Elevator Company, one elevator; Minnesota Elevator Company, twenty-five elevators; Monarch Elevator Company, seventy-eight elevators; National Elevator Company, forty-nine elevators; Northland Elevator Company, thirty elevators; Osborne-McMillan Elevator Company, thirty-eight elevators; Powers Elevator Company, forty elevators; Rugby Elevator Company, four elevators; St. Anthony & Dakota Elevator Company, ninety-five elevators; Victoria Elevator Company, twenty-one elevators; Winter-Truesdell-Ames Company, fourteen elevators; Woodworth Elevator Company, thirty-five elevators; and International Elevator Company, thirty-one elevators.

V.

That each of the plaintiffs is engaged in interstate commerce in grain conducted by buying grain in the State of North Dakota, largely from producers, causing the same to be transported to terminal markets outside of the State of North Dakota, principally to the Minnesota terminal markets at Minneapolis and Duluth, and selling such grain at these terminal markets; that at the different stations where their elevators are located, the plaintiffs severally and independently of each other buy such grain; that the elevators located in the State of North Dakota and belonging severally to the plaintiffs were constructed and are used by the plaintiffs to facilitate the transferring of grain from farmers' wagons when bought to railroad cars for such shipment beyond the State as rapidly as carload lots of one kind and grade of grain are accumulated and cars
6 for loading can be obtained; that each of the plaintiffs has carried on such interstate grain business and commerce during the season of 1921 and 1922 and will continue such business during the season of 1922 and 1923 unless prevented from so doing.

VI.

That the property used by each of the plaintiffs in the conduct of its business, including elevators and equipment, is of a value in excess of Ten Thousand Dollars ($10,000.00); that the right of each plaintiff to carry on and continue such business greatly exceeds in value the sum of Three Thousand Dollars ($3,000.00).

That the aggregate amount of wheat which the plaintiffs independently of each other buy, transport and sell in interstate commerce in their said business originating in North Dakota in normal crop years exceeds thirty million (30,000,000) bushels.

VII.

That there are situated in the State of North Dakota a large number of country elevators, approximately twenty-two hundred (2,200), including the elevators owned by these plaintiffs, and said elevators are used by their respective owners severally in conducting an interstate business and commerce in grain originating in the State of North Dakota in all respects similar to the business conducted by these plaintiffs; that because of the large number of persons engaged in said grain business in the same way and under like conditions with these plaintiffs, it is impracticable to join all by name as parties plaintiff herein; that this action is brought by the plaintiffs named herein on behalf of themselves and all other persons and corporations engaged in the same business and subject to the same conditions herein set forth who may join as plaintiffs or who may be shown to be entitled to relief hereunder.

VIII.

That North Dakota produces more spring wheat than any other — of the United States; its crop varies from one hundred million (100,000,000) bushels to one hundred fifty-six million (156,000,000) bushels annually; this wheat when marketed moves largely to other States; approximately ninety per cent (90%) of the wheat
7 raised and sold in North Dakota is bought in interstate commerce and is actually transported by rail to the terminal markets outside of the State, principally to the Minnesota terminals at Minneapolis and Duluth; this movement has existed for many years and will necessarily continue in the future because consumers of wheat and wheat products throughout the United States are largely dependent upon wheat grown in North Dakota for their supplies and the producers of wheat in North Dakota are largely dependent upon the consumption of that grain outside of the State of North Dakota for their market; that there is no market in the State of North Dakota for the aggregate amount of wheat bought by the plaintiffs herein named from producers in the State of North Dakota; to accommodate this commerce facilities have been developed not only by the building of country elevators connected with railroad tracks at all stations

within the grain growing area throughout North Dakota by those engaged in this commerce, as above stated, but as well by the construction of elevators of great capacity at the terminal markets in which this wheat is received and held until it is milled or exported and by the construction of large flour mills at Minneapolis and other points in the State of Minnesota; that the aggregate capacity of the terminal elevators at the Minnesota terminals exceeds ninety-two million (92,000,000) bushels; that the flour mills located at Minneapolis, Minnesota, mill annually approximately seventy-five million (75,000,000) bushels of wheat; thousands of persons are actually engaged in carrying on this interstate grain business and commerce and enormous permanent investments have been made to provide facilities for such interstate commerce in grain.

IX.

That the defendant Svenbjorn Johnson is the duly elected, qualified and acting Attorney General of the State of North Dakota; that the defendants Frank Milhollan, President, C. W. McDonnell and W. H. Stutsman are the duly appointed, qualified and acting members of the Board of Railroad Commissioners of the State of North Dakota and together constitute the Board of Railroad Commissioners of said State.

X.

8 That under and in accordance with the Act of Congress of the United States, known as the United States Grain Standards Act, 39 United States Statutes at Large, Chapter 313, page 482, the Secretary of Agriculture of the United States has heretofore, by Service and Regulatory Announcements Number 33 and 46, established standard grades for corn, wheat and oats and that said standards are and have been in force during all of the time herein mentioned; that thereunder there have been appointed and there are stationed at all primary grain markets and terminals Federal Inspectors charged with the duty of inspecting and grading all grain arriving at such terminal market in interstate commerce in accordance with the official grain standards of the United States; that the corn, wheat and oats handled by the plaintiffs herein is subject to and is graded by such Federal Inspectors according to the official grain standards of the United States; that the Secretary of Agriculture, under authority of the provisions of the Federal Grain Standards Act, has promulgated rules with reference to the grading of grain, the determination of the dockage therein and all other matters involved in and connected with the inspection and grading of grain, which said rules and regulations are in force and are used and applied by the Federal Inspector in such inspection and grading of grain handled by the plaintiffs and others as herein described.

XI.

That at the general election of the State of North Dakota held November 7th, 1922, there was voted upon an initiative measure entitled,—"An Act declaring the purpose of the State of North Dakota to supervise and regulate the marketing of farm products; preventing unjust discrimination, fraud and extortion in the marketing of same; establishing a system of grading, weighing and measuring farm products; defining the scope and manner of such supervision and the powers and duties of the persons charged with same; providing for licensing buyers, solicitors, and warehouses handling such farm products; and making an appropriation therefor", and by its terms known as the "North Dakota Grain Grading Act"; that the result of the vote upon said Act has been announced and said
9 Act declared to have received a majority of votes, and that thereby said Act became and is an existing law and statute of the State of North Dakota.

That said Act by its terms directs and requires the Board of Railroad Commissioners of the State on or before the 8th day of December, 1922, to appoint for a term of four years a Supervisor of Grades, Weights and Measures, who shall be an expert in the grading, weighing and measuring of all kinds of grain, seeds and other agricultural products; and provides that such Supervisor shall immediately assume the duties of his office and shall receive a salary of Thirty-six Hundred Dollars ($3600.00) per annum.

By the terms of said Act it is further provided and made the duty of the State Supervisor of Grades, Weights and Measures to fix and establish grades, weights and measures for all kinds of grain, seed and other farm products, and to prescribe standards of quality and conditions of same; and it is further provided and made the duty of said State Supervisor to investigate and supervise the marketing of grain, with a view of preventing unjust discrimination, unreasonable margins of profit, confiscation of valuable dockage, fraud and other unlawful practices; and, in establishing grades, weights and measures, to consider the value of dockage and to require that the buyer should not be permitted to retain same without just compensation, and to require that the buyer shall pay the fair market value for same, or separate it and return it to the producer.

By the terms of said Act it is further provided that whenever the Secretary of Agriculture of the United States has established grades, weights and measures or any standards of quality in the condition of any grain, seed or other agricultural products under the United States Grain Standards Act, such grades, standards of quality and conditions, weights and measures shall become the grades, standards of quality and conditions, weights and measures of this State.

By the terms of said Act it is further provided:

That, after grades, weights and measures shall have been fixed and established, then no person thereafter shall buy by grade any such farm product, unless it shall have been inspected and graded by an

inspector licensed under the provisions of this Act or under
10 the provisions of the United States Grain Standards Act, and
the grade by which it is bought be one of the grades fixed and recognized under the provisions of said Act;

That the State Supervisor of Grades, Weights and Measures shall issue a license to grade to any person engaged in soliciting, buying, weighing and inspecting or grading grain, seeds or other agricultural products, or to the buyer or agent of a privately or publicy owned warehouse, elevator or flour mill handling agricultural products, provided that such buyer, solicitor or agent shall pass such reasonable examination as to his competency as may be prescribed by the State Supervisor of Grades, Weights and Measures;

That a State warehouse license must be obtained through the State Supervisor of Grades, Weights and Measures for each and every public warehouse handling grain, seed or other farm products in the State, the license fee for such warehouse to be fixed by the State Supervisor of Grades, Weights and Measures, and shall not exceed One Dollar ($1.00) for each one thousand (1,000) bushels capacity of such warehouse;

That any public warehouseman or individual buying grain who does not pay cash in advance for the grain so bought, shall be required to file with the State Supervisor of Grades, Weights and Measures, a bond running to the State, with good and sufficient surety in an amount sufficient to cover the value of all farm products bought and not paid for in cash;

That every public warehouseman shall keep a record of the names and addresses of their respective warehouses, elevators or mills, the price paid for agricultural products, the grades given, the price received, and the grades received at the terminal markets or within the State, which information shall be furnished to the Supervisor of Grades, Weights and Measures upon written request.

That, in case of any dispute as to grades, weights or measures between the producer and the purchaser, operating a public warehouse, elevator or mill, handling agricultural products, then a sample shall be taken from such farm product, and shall be sent to the Supervisor of Grades, Weights and Measures, and the proper grade, weight or measure shall be determined by him under such rules and regulations as he may establish.

11 That it shall be unlawful for any person to grade grain, seed or other agricultural products, who has not been licensed by the Supervisor of Grades, Weights and Measures, or who does not hold a license to grade, weigh or measure grain, seed or other agricultural products under the United States Grain Standards Act.

That the State Supervisor of Grades, Weights and Measures is authorized to employ such deputies, assistants, accountants, expert agents and servants as in his judgment he deems necessary. The expense thus incurred and other expenditures for the operation and maintenance of the Department of Grain Grading, shall be paid from the appropriation made and the funds received from the licensing of elevators, warehouses and mills handling agricultural prod-

ucts; and that the salary of the State Supervisor of Grades, Weights and Measures shall be paid out of the Grain Grading Fund.

It is further provided by said Act that all the duties and obligations which were formerly performed by the State Inspector of Grades, Weights and Measures, and all of the obligations placed upon him by law, are transferred and made part of the duties of the Supervisor of Grades, Weights and Measures.

XII.

That, in order to engage in interstate commerce in grain produced in North Dakota in a practical manner or in substantial quantities, it is necessary to own and operate elevators or warehouses at stations where producers bring grain for sale. That in practically all cases the sole object and purpose of the person who acquires an elevator or warehouse at such station is to handle through the same grain bought from producers, and that while under the Statutes of the State of North Dakota such warehouses are required to receive grain for storage and do in fact so receive it, substantially all such grain received for storage is ultimately sold by the producers storing the same to the owners of the elevator at such time as the producer is satisfied with the market price of such grain, and in actual
12 practice, because of the limited capacity of elevators, stored grain is often shipped to the terminal market immediately upon its receipt and in advance of an actual sale of the same by the producer to the owner of the elevator. That it is, in the conduct of such interstate commerce in grain in North Dakota, impracticable to keep separate the grain sold by different producers to the owner of an elevator and ship such grain separately to a terminal market where it might be graded by a Federal Inspector, and it is necessary, in the actual conduct of such grain business, to assemble and mix in the elevator the purchased grain of different producers until there is a sufficient quantity of one grade of grain to load a car for shipment.

By the terms of said North Dakota statute in practice grain must be graded by buyers owning or employed by the owners of elevators where such grain is received and purchased from producers. No inspectors licensed or appointed under the United States Grain Standards Act are stationed at the points where such elevators are located, and under the United States Grain Standards Act, buyers of grain cannot be appointed as Federal Inspectors. That it will be difficult or impossible for the owners of elevators to buy grain from producers, in compliance with the provisions of the North Dakota Statute for interstate movement, and the movement of grain from the State of North Dakota in interstate commerce would be greatly hampered and impeded, and, in some instances, prevented if said statute were put into effect and its provisions enforced.

That the license fees fixed by said Statute of North Dakota for operating an elevator is a direct tax and burden upon the purchase of grain in North Dakota for movement in interstate commerce, for the reason, among others, that said elevators are required as an in-

strumentality in such purchase and movement of such grain. That the license fees fixed and permitted by said Act are unreasonable and exorbitant and place a direct, unnecessary and unreasonable burden upon interstate commerce in grain originating in the State of North Dakota.

That there is now in force and effect in the State of North Dakota statutes fully regulating the operation of warehouses and re-
13 quiring the licensing of the same by the State, placing the same under the supervision and control of officers of the State of North Dakota and fixing license fees to be paid by the owners more than adequate to pay all costs and expenses incurred by the State in such licensing and supervision. That the so-called North Dakota Grain Grading Act does not materially change the supervision of such warehouses, but seeks to control and regulate the buying of grain in interstate commerce by the owners of such elevators, and to require such owners as buyers to procure a license, and fixes under the guise of a fee for an elevator license in reality an unreasonable and exorbitant fee for the privilege of buying grain in interstate commerce, a fee much in excess of the present warehouse license fee.

That the provision of said statute *statute* requiring owners of elevators to furnish to the State Inspector the prices paid for agricultural products and the grades given, the price received and the grades received at the terminal markets requires the keeping and making of reports to an officer of the State of North Dakota, as such, of transactions in interstate commece; that such requirement is beyond the power and authority of the State; that if enforced it would involve a substantial expense to each of the plaintiffs and would constitute a direct and unwarranted burden upon interstate commerce.

That the requirement of a bond as a condition of the purchase of grain interferes with the right of contract and with the free movement of grain in interstate commerce.

XIII.

That the provision of said Act requiring the State Supervisor to supervise the marketing of grain, with a view of preventing unjust discrimination, unreasonable margins of profit, confiscation of valuable dockage and other unlawful practices, was intended to and does in fact authorize said State Supervisor to regulate, control and interfere with the purchase and movement of grain in interstate commerce.

XIV.

That by the provisions of said statute, the duties and powers prescribed by Chapter 138 of the Laws of 1919 for the State In-
14 spector of Grades are conferred upon the State Supervisor of Grades, Weights and Measures. That said Chapter 138 is in scope, purpose and effect, substantially identical with the statute adopted at the general election, November 7th, 1922. That in the case of the Farmers Grain Company of Embden vs. William Lemke, et al., said statute was held to be and declared invalid by the Circuit

Court of Appeals of the Eighth Circuit, because and on the grounds: that the same imposed a direct and unreasonable burden upon interstate commerce, and that the same was in conflict with the United States Grain Standards Act. That thereafter on appeal to the United States Supreme Court such decision of the Circuit Court of Appeals was affirmed. That while the State Statute adopted in 1922 differs in detail from said Chapter 138 it, like the former statute, does interfere with and places a direct burden upon interstate commerce and it does to the same extent and in the same manner as the former statute conflict with United States Grain Standards Act.

That the purpose and effect of the so-called North Dakota Grain Grading Act was to,—in total disregard and in protest against said decisions declaring said Chapter 138 invalid, and in total disregard of the commerce clause of the Federal Constitution, and of the provisions and force of the United States Grain Standards Act,—reestablish by statute the control by the State of the marketing of the entire North Dakota Grain crop and the movement of such crop in interstate commerce, and the control by the State of the determination of the grades and dockage of such grain as a condition precedent to such grain moving in interstate commerce and to control through state licenses all persons seeking to buy North Dakota grain for shipment out of the State, and to place upon such interstate commerce the great and unreasonable expense and burden of maintaining a State Department charged with this duty of directly interfering with and controlling the interstate commerce in North Dakota grain.

XV.

That while said North Dakota Grain Grading Act by its terms provides that grades established under the United States Grain Standards Act shall be the established grades under the State Act, it does contemplate, provide and require that the actual grading of grain bought in North Dakota in interstate commerce shall be done and the grade of such grain be established by buyers licensed as State Inspectors, who cannot be designated as Federal Inspectors. Such State Inspectors must determine the grade of such grain under and in accordance with the State Statute and the rules established by the State inspector. In case of dispute an appeal must be taken to the State inspector. No provision is made for appeal to a Federal inspector or the Secretary of Agriculture. Under the United States Grain Standards Act, such grain when it arrives at and is sold in the terminal market outside of the State of North Dakota must be graded by and the grade determined by Federal Inspectors with the right of appeal to the Secretary of Agriculture. Upon the same grain a different grade and different dockage will frequently be established for and in the purchase of grain from that established for and in the sale of the same grain in a single interstate commerce transaction. In this way and in many other respects and provisions the North Dakota grain grading act conflicts with the United States Grain Standards Act, and would if enforced render interstate commerce in grain uncertain, difficult and subject to unnecessary risks and burdens.

XVI.

That many of the elevators owned and operated by the plaintiffs herein, because of the limited capacity and lack of machinery and facilities for screening grain, are and will be wholly unable to separate the dockage from grain when such grain is purchased at the elevators. That in the purchase of grain valuable dockage contained therein is and has been taken into consideration in fixing the price to be paid therefor. That the State statute requiring a specific payment for dockage or the separation and return of the same to the seller, if enforced, would interfere with the right to freely contract for and purchase grain in interstate commerce.

That producers of grain can, if they desire, separate the dockage from the grain before the sale thereof. That to require elevator companies to separate such dockage from the grain, especially during the period of rapid crop movement, would deprive the owners of elevators of the use of such elevator to facilitate the transfer of grain bought by them from the producers' wagons to railroad cars.

16 That the power attempted to be conferred by the so-called North Dakota Grain Grading Act upon the State Inspector to compel the owners and operators of elevators in the State of North Dakota using such elevators in interstate commerce to purchase and place in such elevators cleaning machinery so that grain bought by them can be cleaned and the dockage separated from the grain is an unreasonable, arbitrary and unwarranted requirement and would confer upon the State Inspector unreasonable and arbitrary powers; that such requirement and the exercise of the power sought to be conferred would result in a direct, excessive and great burden upon interstate commerce and upon the privilege and right of engaging in such commerce in the State of North Dakota.

That said statute by its terms deprives the owners of elevators of their property without due process of law.

XVII.

That the plaintiffs herein are tax payers in and to the State of North Dakota; that the appointment of a State Supervisor of Grades, Weights and Measures under the provisions of said State Statute, and the payment to him of the salary provided by said Act, will place a direct burden of taxation upon the plaintiffs and will increase their respective taxes.

XVIII.

That unless restrained by order of this Court from so doing, the defendants, constituting the Board of Railroad Commissioners of the State of North Dakota, will as such Board on or before the 8th day of December, 1922, appoint some person as Supervisor of Grades, Weights and Measures, and such person will immediately assume the duties of his office and begin to and thereafter receive a salary of Three Thousand Six Hundred Dollars ($3,600.00) per annum, and

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will proceed to put in effect said statute and require these plaintiffs to comply with all the provisions thereof.

That unless restrained from so doing, the defendant, the Attorney General of the State of North Dakota, will enforce against these plaintiffs, and each of them, all the penalties prescribed by said Act for non-compliance with the provisions thereof.

17 That such action on the part of the defendants will cause irreparable injury and damage to the plaintiffs and their respective properties, and the plaintiffs have no plain, speedy or adequate remedy at law in the premises.

XIX.

That the amount involved in this suit, exclusive of interest and costs, as to each of the plaintiffs, exceeds the sum of Three Thousand Dollars ($3,000.00).

XX.

That plaintiffs are advised by counsel and allege the fact to be that said statute adopted at the election of November 7th, 1922, is wholly void and invalid, and that the same violates the Constitution of the United States in the following, as well as in other respects:

(1) It violates Article 6 of the Constitution of the United States, in that it conflicts with and is in contravention of the United States Grain Standards Act (39 U. S. Statutes at Large, Chap. 313, p. 482) and Service and Regulatory Announcements Numbers 33 and 46, establishing thereunder official grain standards of the United States for wheat, shelled corn and oats.

(2) It violates Section 8 of Article 1 thereof, in that it interferes with commerce between the States and places a direct and unreasonable burden upon such commerce.

(3) It violates the Fourteenth Amendment to the Constitution of the United States, in that it deprives the plaintiffs of propery without due process of law and denies to the plaintiffs the equal protection of the law, and abridges the right of the plaintiffs to contract.

XXI.

That said Statute of North Dakota adopted November 7th, 1922, is in violation of the Constitution of the State of North Dakota and especially of Section 11 and of Section 20 and of Section 25 and of Section 61 and of Section 85 thereof.

XXII.

That these plaintiffs are actively engaged in interstate commerce in grain and are operating their respective elevators in connec-

18 tion therewith continually; that they each will refuse compliance with the provisions of said statute of North Dakota and any rules and regulations which may be promulgated thereunder; that any enforcement of said Act and the resulting inter-

ference with the respective elevators and business of the plaintiffs, even for a few days, would cause each of the plaintiffs great and irreparable injury, and the plaintiffs hereby claim for themselves respectively and for all others similarly situated the protection of the various laws and constitutional provisions hereinbefore stated.

Wherefore, plaintiffs pray that the defendants may be required to make full and true answer to this Bill of Complaint (not under oath, their oath being hereby expressly waived).

That this Court order and decree that the provisions of said statute of North Dakota adopted November 7th, 1922, known as "The North Dakota Grain Grading Act," are in conflict with the Constitution of the United States and with the Act of Congress and regulations thereunder above referred to establishing Federal standards for grading wheat, oats and corn, and that said statute places an unnecessary and unreasonable burden upon interstate commerce in grain, and that said statute is wholly invalid and void.

That the defendants, their agents, servants and employees, and all officers of the State of North Dakota subordinate to and under the direction of said defendants, be restrained and enjoined, during the pendency of this action, from enforcing the provisions of said statute and from instituting against these plaintiffs, or any of them, or of the employees, or any of them, criminal prosecutions or other proceedings at law for alleged violation of said statute.

That the defendants, the Board of Railroad Commissioners, be enjoined and restrained from appointing a Supervisor of Grades, Weights and Measures, under the provisions of said Statute. That, if such Supervisor is or shall be appointed, that he be restrained from enforcing any of the provisions of said statute, and that all said defendants and all officers of the State of North Dakota, and all agents, servants and employees thereof, be enjoined and restrained from in any manner interfering with these plaintiffs, or any of them, in the buying of grain and fixing the price thereof, and from tres-
19 passing upon the property of the plaintiffs, or any of them, and that the force and effect of said statute be suspended and its enforcement as to these plaintiffs be enjoined until the final determination of this cause.

That on the trial of this cause such restraining order and injunction be made permanent.

And that the plaintiffs have such other and further relief as to Your Honors shall seem meet.

Dated this 5th day of December, 1922. David F. Simpson, Lancaster, Simpson, Junell & Dorsey, H. A. Libby, Attorneys for Plaintiffs, 630 First National-Soo Line Bldg., Minneapolis, Minnesota.

STATE OF MINNESOTA,
County of Hennepin, ss:

A. C. Andrews, being first duly sworn, says that he is one of the plaintiffs in the above entitled action; that he has read the foregoing Bill of Complaint and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated

on information and belief, and that, as to those matters, he believes them to be true. A. C. Andrews.

Subscribed and sworn to before me this 5th day of December, 1922. Ruby M. Reiter, Notary Public, Hennepin County, Minn. (Notarial Seal.) My Commission expires Nov. 5th, 1926.

20 [File endorsement omitted.]

21 In United States District Court.

[Title omitted.]

Motion for Interlocutory Injunction.

[Filed Dec. 6, 1922.]

To the Honorable Judges of said Court:

Comes now the plaintiffs herein by their attorneys, and make this, their motion and application to this Court for an interlocutory injunction against the defendants, and each of them, individually and in their respective capacities as officers of the State of North Dakota, enjoining and prohibiting said defendants, either as individuals or as representatives of the State of North Dakota, from acting under or in pursuance of or from in any way carrying out or enforcing any of the provisions of the Statute of the State of North Dakota adopted at the general election held November 7th, 1922, entitled,—"An act declaring the purpose of the state of North Dakota to supervise and regulate the marketing of farm products; preventing unjust discrimination, fraud and extortion in the marketing of same; establishing a system of grading, weighing and measuring farm products; defining the scope and manner of such supervision and the powers and duties of the persons charged with same; providing for licensing buyers, solicitors, and warehouses handling such farm products; and making an appropriation therefor",—and by its terms known as the "North Dakota Grain Grading Act", and suspending the force and effect of said the North Dakota Grain Grading Act so far as concerns these plaintiffs and any others similarly situated who may join in said action or be shown entitled to the same relief therein, such interlocutory injunction to remain in force until the final hearing of this cause and the determination of this Court as to the issuance of a permanent injunction therein or the further order of this Court.

22 And, further, until the hearing upon and the determination of this motion for an interlocutory injunction, that the defendants and each of them be restrained from, either as individuals or as representatives of the State of North Dakota, acting under or in pursuance of said State statute, and that the force and effect of said statute be suspended until the further order of this Court.

This motion is made upon the verified Bill of Complaint hereinbefore filed and upon the ground that these plaintiffs will suffer grave

and irreparable damage prior to the hearing of this cause if said interlocutory injunction be not granted and prior to the hearing upon said interlocutory injunction if a restraining order be not issued herein as prayed. David F. Simpson, Lancaster, Simpson, Junell & Dorsey, 630 First National-Soo Line Building, Minneapolis, Minnesota; Hiram A. Libby, Grand Forks, North Dakota, Attorneys for Plaintiffs.

[File endorsement omitted.]

23 [Title omitted.]

Temporary Restraining Order.

[Filed Dec. 6, 1922.]

Upon reading and filing the Bill of Complaint herein, and on motion of the plaintiffs' counsel,

It is Ordered that the hearing upon said motion for an interlocutory injunction be had at the Court Room of this Court in the Federal Building in the City of Fargo N. D. at ten o'clock A. M. of the 16th day of December, 1922, and that the defendants show cause, if any there be, before this Court at said time and place why an interlocutory injunction should not issue as prayed by said Bill.

And it appearing to the Court that it will be prejudicial to the public interest and will cause irreparable injury to the plaintiffs herein if the purchase and movement of grain in interstate commerce from the State of North Dakota shall be suspended or disturbed pending the hearing of the foregoing motion, which cannot be heard until at least five (5) days' notice of such hearing shall be given to the defendants,

It is Further Ordered that the defendant Svenbjorn Johnson, as Attorney General of the State of North Dakota, and Frank Milhollan, C. W. McDonnell and W. H. Stutsman, as the Board of Railroad Commissioners of the State of North Dakota, and all subordinate officers and agents of said defendants, be enjoined and restrained from attempting to enforce or comply with the provisions of the statute of the State of North Dakota by its terms known
24 as the North Dakota Grain Grading Act, and from performing any Act specified therein, and from in any manner interfering with these plaintiffs in carrying on their respective business without compliance with the provisions of said Act, and that said Act be suspended as to its force and effect until such hearing and decision.

That a copy of this order certified under the hand of the clerk and seal of the court be served on each of the defendants to be restrained.

Dated this 6th day of December, 1922, at 10:20 A. M. o'clock of said day. By the Court: Andrew Miller, Judge of the District Court.

[File endorsement omitted.]

24½ Attached to said Restraining Order are the following returns of the United States Marshal.

Marshal's Return.

[Filed Dec. 16, 1922.]

24½*a* Form No. 465.

DISTRICT OF NORTH DAKOTA, *ss:*

I hereby certify and return, that on the 6th day of Dec., 1922, I received the within Restraining Order and that after diligent search, I am unable to find the within named defendant, W. H. Stutsman, within my district. Reported to be in Iowa. James F. Shea, United States Marshal, by Howard H. Strack, Deputy United States Marshal.

24½*b* Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of North Dakota, ss:

I hereby certify and return that I served the annexed Certified copy of Restraining Order on the therein-named R. A. Nestos, as Governor in and for the state of North Dakota by handing to and leaving a true and correct copy thereof with him personally at Fargo, in said District, on the 9 day of Dec., A. D. 1922. James F. Shea, U. S. Marshal, by J. J. Ryan, Deputy.

[File endorsement omitted.]

24½*c* Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of North Dakota, ss:

I hereby certify and return that I served the annexed Certified Copy of Restraining Order on the therein-named Sveinbjorn Johnson, as Attorney General for the state of North Dakota, by handing to and leaving a true and correct copy thereof with him personally, at Bismarck, in said District, on the 7th day of Dec., A. D. 1922. James F. Shea, U. S. Marshal.

24½*d* Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of North Dakota, ss:

I hereby certify and return that I served the annexed Certified Copy of Restraining Order on the therein-named Frank Milhollan, as Commissioner on the Board of Railroad Commissioners for the state of North Dakota by handing to and leaving a true and correct copy thereof with him personally at Bismarck, in said District, on the 7th day of Dec., A. D. 1922. James F. Shea, U. S. Marshal.

24½*e* Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of North Dakota, ss:

I hereby certify and return that I served the annexed Certified Copy of Restraining Order on the therein-named C. W. McDonnell, as Commissioner on the Board of Railroad Commissioners, for the State of North Dakota by handing to and leaving a true and correct copy thereof with him personally at Bismarck in said District on the 7th day of Dec., A. D. 1922. James F. Shea, U. S. Marshal.

24¾ In United States District Court.

(Title of Case.)

Stipulation Postponing Hearing.

[Filed Dec. 16, 1922.]

Whereas, the above entitled action was commenced in said court by the service of a verified bill of complaint application for interlocutory injunction, and restraining order or interlocutory injunction, dated December 6, 1922, and served on the defendants on December 7, 1922, and is now pending in said court, and,

Whereas plaintiffs' petition for said interlocutory injunction was set to be heard at Fargo, North Dakota, at 10 o'clock in the forenoon of the 16th day of December, 1922, and

Whereas, it is deemed necessary for the convenience of the court, attorneys, and all interested parties that said hearing be postponed to some future date.

Now, therefore, it is stipulated and agreed by and between all parties plaintiff to said action, and all of the said defendants, through

the undersigned their respective attorneys of record, that the
25 hearing upon plaintiffs' motion for an interlocutory injunction be, and the same hereby is, postponed from December 16, 1922, to January 5, 1923, at 10 o'clock in the forenoon at the Federal Court Room in the City of Fargo, North Dakota, and that the Judge of said court may make and file the order of the Court in accordance herewith, and,

It is further stipulated and agreed that at the time of the hearing of said motion the same shall be presented, heard and considered, in the same manner in all respects as though said hearing were and had upon said original order, as to time of hearing.

It is further stipulated and agreed that in case affidavits are prepared in behalf of defendants, for use upon said motion and hearing, copies of the same shall be furnished to plaintiffs' counsel at Grand Forks and Minneapolis if possible five days before the date of hearing.

It is further agreed that this stipulation applies to and is made in behalf of all of the individual plaintiffs named in said action, most of whose names are omitted in the title hereof, for convenience, but that as to such plaintiffs and in whose behalf this stipulation is made, reference is here made to plaintiffs' bill of complaint of date December 5, 1922, and served herein.

Dated and signed at Fargo, North Dakota, this 13th day of December, 1922. David F. Simpson, Lancaster, Simpson, Junell & Dorsey, 630 First National Soo Line Building, Minneapolis, Minnesota; H. A. Libby, Grand Forks, North Dakota, Attorneys for Plaintiffs. Seth W. Richardson, Special Assistant Attorney General for the State of North Dakota, Attorneys for Defendant, Fargo, North Dakota.

[File endorsement omitted.]

26 Order Entered on the Journal of this Court for the Southeastern Division, on December 16th, 1922:

Order Continuing Hearing.

(Title of Case.)

A stipulation having been duly made and filed consenting to the passing of the hearing on complainants' motion for an interlocutory injunction to the 5th day of January, 1923, at ten o'clock in the forenoon, at the Federal Court Room in the City of Fargo, North Dakota, signed by the Attorneys representing the parties herein,

Now, therefore, it is hereby ordered that said hearing be continued to said time and place and the restraining order herein is continued in force until the hearing and determination upon said motion for an interlocutory injunction.

In the United States District Court.

(Title of Case.)

Stipulation for Modification of Temporary Restraining Order.

[Filed Dec. 28, 1922.]

Whereas, it appears that there are large quantities of wheat and other small grains stored in warehouses in the State of North Dakota, and some or much of this is likely to be shipped out of the state and disposed of in the markets of the country as soon as freight cars can be obtained for the purpose, and,

Whereas it further appears that in many instances the holders of storage tickets, who are generally farmers in the state, are not adequately protected by surety bonds furnished by the warehouses, and it is desirable that there be the fullest protection to such storage ticket holders in the state, and

Whereas, it further appears that there are probably some warehouses in the state which now have a large storage liability, whose bonds are inadequate, and which may be in a doubtful condition financially,

Now, therefore, it is stipulated and agreed by and between
27 the parties to the above entitled action, and ny and between the attorneys for the respective parties thereto, that the interlocutory order made by the above entitled court, restraining the defendants and each of them during the pendency of this action, and until the final hearing of this cause and the determination of this court as to the issuance of a permanent injunction herein, or the further order of the court may be by the court modified by its order, so that the proper officials of the state of North Dakota shall have and may exercise the authority to require new bonds or additional bonds, wherever it may be necessary in the judgment of such officials, in order to ade-uately protect storage ticket holders in the state of North Dakota.

It is further stipulated and agreed by the parties hereto, that this stipulation shall not in any court be considered a waiver of any of the points raised by the plaintiffs with reference to the constitutionality of the law challenged in this proceeding, and that this stipulation shall not be adverted to by counsel upon either side for any purpose whatsoever, before any tribunal upon the hearing of the above entitled matter on the merits, or for any interlocuatory or intermediate orders therein, except for the purpose of obtaining a modification of the restraining order heretofore issued in conformity with the purpose of this stipulation, and,

It is further stipulated and agreed, that upon any and all hearings had in the above entitled action in any court, the rights of the plaintiffs shall be and are in no manner abridged by reason of this stipulation, but that each and all of their rights are preserved, and may be asserted in the same manner as though this stipulation were not made.

Dated at Grand Forks, North Dakota, this 27th day of
28 December, 1922. David F. Simpson, Lancaster, Simpson, Junell & Dorsey, Minneapolis, Minnesota; H. A. Libby, Grand Forks, North Dakota, Attorneys for Plaintiffs. Sveinbjorn Johnson, Attorney General of North Dakota, Attorney for Defendants.

[File endorsement omitted.]

29 In the United States District Court.

(Title of Case.)

Order Modifying Temporary Injunction.

[Filed Dec. 28, 1922.]

Upon reading and filing the stipulation in the above entitled matter entered into by and between the plaintiffs and the defendant therein, and their respective attorneys, dated the 27th day of December, 1922, and upon all the files and records in the action, and upon the motion of Sveinbjorn Johnson, Attorney General of the State of North Dakota, and one of the attorneys for the defendants herein.

It is ordered that the interlocutory injunctional order made in the above entitled matter by the Court on the 6th day of December, 1922, at ten o'clock A. M., on said day, be, and the same is hereby, modified in the following manner: The proper officials of the State of North Dakota and the defendants herein shall, notwithstanding said interlocutory injunctional order, have and may exercise the authority to require new bonds or additional bonds of warehouses and elevators in the State of North Dakota wherever and whenever in the judgment of such officials and the defendants herein, it may be necessary in order to adequately protect storage ticket holders in the State of North Dakota who have stored grain in such elevators, or whose assignors have stored grain therein. It is the purpose of this order modifying the injunctional order aforesaid, to enable the proper officials of the state of North Dakota, and the defendants herein, to take the necessary steps to protect farmers and other persons who have stored grain in elevators and other warehouses in the State by requiring the necessary bonds to insure full protection on account of such storage.

This order is made pursuant to the stipulation herein referred — without any prejudice whatsoever to any of the rights of the plaintiffs herein to assert that the act, the constitutionality of
30 which is challenged in this proceedings, is unconstitutional and void.

It is further ordered that upon filing of this order, the said proper officials of the State of North Dakota and the defendants herein may proceed to require such new or additional bonds as may be necessary within the contemplation of the stipulation aforesaid, and in accordance with the terms of this order.

Dated this 28th day of December, A. D. 1922, at three o'clock P. M. Andrew Miller, Judge of the District Court of the United States, District of North Dakota.

[File endorsement omitted.]

In the United States District Court.

(Title of Case.)

Stipulation for Substitution of Parties Defendant.

[Filed Jan. 5, 1923.]

It is stipulated by and between the above entitled parties, by their respective attorneys, that George F. Shafer is now the duly qualified and acting Attorney General of the State of North Dakota, succeeding Sveinbjorn Johnson, the above named defendant, and that Fay Harding is now the duly elected, qualified and acting member of the Board of Railroad Commissioners, succeeding W. H. Stutsman, and that the said George F. Shafer as Attorney General, and said Fay Harding as one of the Board of Railroad Commissioners may be substituted as parties defendant for Sveinbjorn Johnson and W. H. Stutsman.

Dated January 4th, 1922. Lancaster, Simpson, Junell & Dorsey, H. A. Libby, Attorneys for Plaintiffs. Seth W. Richardson, Attorney for Defendants.

31 [File endorsement omitted.]

32 In United States District Court.

Before Hon. William S. Kenyon, United States Circuit Judge; Hon. James D. Elliott, United States District Judge; Hon. Joseph W. Woodrough, United States District Judge.

(Title of Case.)

Order. Entered January 5th, 1923.

Upon the stipulation filed this day, it is ordered that George F. Shafer, Attorney General, be substituted for Sveinbjorn Johnson, Attorney General, and Fay Harding for W. H. Stutsman, as defendants herein.

Argument and Submission.

This cause coming on for hearing upon the motion for a preliminary injunction, the complainants appearing by Messrs. Lancaster, Simpson, Junell & Dorsey, and H. A. Libby, Esq., their solicitors, and the defendants appearing by George F. Shafer, Attorney General, and Seth Richardson, Esq., their solicitors, after hearing arguments of counsel, the matter was submitted to the Court and taken under advisement.

33 In United States District Court.

(Title of Case.)

Answer.

[Filed Jan. 5, 1923.]

Defendants for their cause why an interlocutory injunction should not issue in the above entitled action, as prayed by the bill of complaint therein, allege as follows:

Section I.

With respect to the allegations of Paragraphs One, Two, Three, Four and Six, of the said bill of complaint, defendants have no information or belief, and therefore deny the same.

That defendants admit Paragraph Nine.

Defendants further deny each and every matter and thing set up or contained in the said bill of complaint except as hereinbefore or hereinafter admitted, qualified or explained, save and except that the defendants admit that Congress has passed, and there is now in force and effect the United States Grain Standards Act, (39 U. S. Stats. at Large, p. 42); and that the people of North Dakota duly enacted a measure known as the North Dakota Grain Grading Act; and further admit that unless restrained by order of this court, the defendants will use all proper means to enforce the lafwul provisions of the North Dakota Act.

Defendants further allege that prior to the notice of the issuance of the temporary restraining order heretofore issued in the above entitled action, and before said order was served upon defendants, or any of them, the said defendants, constituting the Board of Railroad Commissioners, did under the provisions of the said
34 North Dakota Grain Grading Act hereinbefore referred to, duly appoint John N. Hagan, a duly qualified citizen of the State of North Dakota, as the state supervisor of grades, weights and measures, as provided for in the North Dakota Grain Grading Act herein involved, and that the said Hagan thereupon duly qualified as such supervisor, and is now the duly appointed, qualified and acting supervisor under said act, and that George Schafer is now the duly elected and acting Attorney General, and Fay Harding the duly elected and acting member of the Railroad Commission, to succeed W. H. Stutsman, above defendant.

Section II.

Defendants for further cause why the application of the said plaintiffs for an interlocutory injunction should be denied, allege and state as follows, to-wit:

That the State of North Dakota has but one major industry, to-wit, the production and sale of its wheat crop. The transaction of

practically all business in the state is dependent upon such crop, and the moneys upon which the prosperity of the state depends, is very largely the proceeds of such grain crop; that the said crop is produced by the farmers of North Dakota, who constitute, with their families and dependents, by far the largest proportion of the population of the state.

That over seventy-five per cent. of the oats raised in the State of North Dakota remains and is consumed within the State, and that practically all the shelled corn remains and is consumed wholly within the State, and that there are in excess of 190 flour and feed mills located in the State of North Dakota, all of which are engaged in the milling of wheat, oats and corn, and that the products thereof are very largely consumed within the State of North Dakota.

Section III.

The physical marketing of the grain on the part of the farmer producer is subject to several inherent difficulties. In the first place, the season is short, and the harvest of the grain becomes general at the same time throughout the state. Very few farmers have sufficient storage facilities on their farms to take care of their grain, and it therefore becomes necessary for them to immediately rush the same to an elevator for storage or sale. The local transportation of this grain to the elevator is seldom done by the farmer himself, but is done by team, driven by hired men, women, children, or other members of the farmer's household. Such persons have usually no knowledge of grain, its grade, quality or condition, and are simply able to act as a means of transporting such grain from the farm to the elevator. All of these acts are done in a great hurry, due to short season, lack of storage room, and the necessity of giving such grain prompt attention, and under circumstances which prevent the farmer producer from having or maintaining any supervision, judgment or control over such grain himself.

Defendants further allege that the present Federal Standards and Grades on wheat are very different and more complicated than the old grades were, and are very much more technical, and that the average farmer, without the assistance of trained inspectors, cannot properly determine the grade of wheat which he raises and offers for sale.

Section IV.

When such grain arrives at the elevator under the circumstances and methods above stated, and is presented to the elevator, it must be then graded and inspected, regardless of whether the grain is received for storage or sale. This grading and inspection is supposed to be done in accordance with grades fixed under the United States Grain Standards Act by the buyer in charge of the elevator, and he is the only person ordinarily available with sufficient information and knowledge of grain to properly grade and inspect the same, and the grading and inspection of practically all grain is wholly dependent upon such buyer. That such buyer is usually in sole charge at

such elevator, and in the great majority of cases is the only person having knowledge of the prevailing grades and prices then being paid for grain. That the price of said grain either for storage or sale, is wholly fixed by such grade and inspection, and any and all returns or remuneration which the said farmer producer may receive for his sole product depends necessarily upon the grade
36 and inspection given to such grain by such buyer. That by reason of the situation and methods hereinbefore referred to, the farmer producer is wholly unable himself to exercise any supervision, care or control over such grain, and usually has neither the opportunity nor the knowledge to see that such grain receives proper grading and inspection and weights, and is therefore utterly dependent upon the honesty and competency of the said elevator buyer in connection with the sale and storage of said grain.

Section V.

That by reason of the conditions, facts and circumstances hereinbefore set forth, which have continued for many years and which must inevitably and necessarily continue in the future, grevious, flagrant and widespread evils, wrongs and offenses have, as defendants are informed and believe, grown up, flourished and become notorious throughout the entire state of North Dakota, and, as well, the entire grain-raising section of the country. That by reason of the fact that the said buyer aforesaid is in entire and sole control of the situation at the local elevator, and by reason of the fact that such grain buyer is the only person who has authority or power or knowledge in connection with the grading and inspection of the grain, and such grain buyer being invariably the employe of the elevator company purchasing or storing such grain, and to whom the farmer producer must sell, and being accountable to his principals only for the actual grades and inspections given, and being required to account for any shortage when grain purchased finally arrives at the terminals, such situation and practices have resulted in the widespread evils and wrongs above referred to.

That such evils and wrongs consist of systematic, widespread, persistent and intentional under-grading of grain; in not properly weighing and inspecting such grain; in depriving the farmer producer of valuable foreign contents of grain known as dockage; that by understanding and agreement, and at various and numerous places throughout the state, by reason of the lack of control and supervision over the marketing of grain, said elevator companies and
37 other persons buying grain for shipment, have been accustomed to, and at the present time take from the producer of said grain an unfair and unreasonable margin of profit in view of the prevailing price of such grain at the terminal markets, and the actual cost and expense of handling the same.

That the facts and circumstances and conditions hereinbefore set forth are a direct and inevitable inducement to such grain buyers upon the purchase or receipt of grain from the farmer producer, to

buy or receive said grain at as low a grade as possible, and to reduce the alleged weight of such grain to as low a figure as possible, and to appropriate all dockage in order that the returns to the elevator companies by whom such buyer is employed, or to such buyer himself, may be thereby augmented and increased.

Section VI.

That by reason of the foregoing facts and circumstances, it has become, and now is, the widespread and prevailing belief among the people of North Dakota generally, that such evils and improper practices as are hereinbefore alleged are now in full operation and existence by reason of the absence of any operative regulation or supervision of the said local grain business by any state or federal authority, and that the grain producers of said state are being deliberately robbed and cheated out of millions of dollars each year by reason thereof, and that such belief has for many years past, and at the present time, is, causing great and widespread disturbance, dissatisfaction, complaint and unrest among the people in North Dakota; that such understanding and belief has been entertained by the people of North Dakota for many years, and that by reason of such belief in the actual existence of the said evils in connection with the marketing of grain, that the subject has received the frequent attention of the people and officials of the said state, and that various measures have been voted on by the people and by the different legislatures of the State of North Dakota with a view to combating and minimizing such evils, and that such efforts have been made by means of constitutional amendments and legislative enactments, and particularly by the passage in 1917, and again in 1919, of legislative acts calculated to combat and minimize such evils; that the said 1919 Grain Grading Act,
38 was, as alleged in plaintiff's bill, held unconstitutional upon certain grounds and reasons set forth in detail in the opinion of the Supreme Court of the United States in the case of Embden Elevator Co. vs. Lemke, et al., recently decided; that in view of the fact that no legislative session would convene until January, 1923, and in view of the fact that the invalidation of the 1919 Grain Grading Act left the State of North Dakota without any enforceable law to protect its citizens against the evils hereinbefore referred to, and in order that the grain producers of the State might not be wholly unprotected in connection with the marketing and disposal of their grain, as hereinbefore set forth, there was caused to be initiated under the provisions of law in North Dakota a law known as the North Dakota Grain Grading Act, and that such measure, by its terms, referred to the existing wrongs and evils in connection with the marketing of grain, and expressly provided that the said initiated measure was for the purpose of minimizing and combating such evils, and that such measure was thereafter duly presented to the people of North Dakota at the general election held November 7, 1922, and was passed by the people of

North Dakota by a vote of more than three to one (138,735 for and 44,406 against), and that such act is the act now in force of which the said plaintiffs in their bill of complaint now complain.

Section VII.

Defendants further allege that the present law aforesaid is in all respects a bona fide attempt on the part of the people of the State of North Dakota, under its police power, to put in force and effect an inspection law for the protection of the people of the State, which is in accordance with the opinion, direction and mandates of the Supreme Court of the United States, as indicated in its opinion under the former law as aforesaid, and defendants allege and believe that the present law is different from, and independent of, the former law held invalid by the Supreme Court as aforesaid, and is based, in all material things, wholly upon the United States Grain Standards act, and is particularly in aid of such Act, and is not intended to, and does not constitute a burden upon interstate commerce, and is not in opposition or conflict with
39 the United States Grain Standards Act, or any of the rules issued or in force thereunder, and places upon plaintiffs no improper burden or interference, and that the carrying out and enforcement of the North Dakota Act complained of is made the duty of, and placed in the hands of a supervisor provided for under said act, which supervisor is, under the terms of the United States Grain Standards Act, entitled to become a United States Inspector, empowered under such Federal Act, having the same powers and duties as any Federal inspector at the terminal markets.

Section VIII.

Defendants further allege herein that they believe that the present law has eliminated the objections hereinbefore made by the Supreme Court in connection with the 1919 Act, and that the present law retains only the regulatory features with respect to grading and inspection, under the police power of the State, for the protection of the people of the State, and is wholly in aid of interstate commerce and of the United States Standards Act, and is not to any extent whatever a burden upon interstate commerce.

That the present Act, among other things, permits any person desirous of engaging in the business of grading grain, to act under a license from either the State or the United States; that no license fee is required, and that the grades to be enforced are as determined and authorized by the Federal Government, and that all of the rules and regulations of the Secretary of Agriculture under the United States Grain Standards Act are in effect, promulgated, enforced and adopted under the State Act; that such Act permits the uncontrolled buying of grain by sample or type, in exact manner and form as is permitted by the United States Grain Standards Act, and permits and provides for proper appeal

to the court from any withdrawal of license to engage in the business of grading grain, previously granted.

That under and by virtue of the provisions of the United States Grain Standards Act, the state supervisor provided for in the present State Act is appointed and becomes United States Inspector under the terms of the Federal Act, and that provision is made in the State Act for appeals from the decision of the local buyer, with reference to grades and conditions of grain, to such state supervisor, who is at all times a United States Inspector under the terms of the Federal Act.

That the so-called Federal Inspectors, acting under the terms of the United States Grain Standards Act, at the said terminals as aforesaid, are not Federal officials, but are persons duly appointed and selected under the authority of state grading and inspection laws, and receive their appointment as so-called inspectors under the United States Grain Standards Act under the terms of said Act, because and by reason of the fact that they are already inspectors under the State Act, and that such inspectors receive no pay or remuneration from the Federal Government, but are either paid by state authority, or from the perquisites and fees collected by reason of inspections made.

Section IX.

Defendants further allege that the present Act does not to any extent whatever harass, impede or conflict with the United States Grain Standards Act, or any of the rules and regulations of the Secretary of Agriculture issued thereunder, but that on the other hand the State Act is wholly in aid of said Federal Act, and entirely harmonious therewith; that under and by virtue of the provisions of the United States Grain Standards Act, the same is not exclusive, and is not intended to cover the entire grain business, and the existence and operation of the state grading and inspection departments is recognized and permitted, and the officials of such state department are required to be made inspectors under the Federal Act; that under the terms of said Federal Act, the same is entirely in control and in force at terminal points, and that no aim, purpose or intent exists in the said Federal Act to control or provide for any inspection or supervision at any other point, and particularly at the local elevator, and that under the rules and regulations issued by the Secretary of Agriculture and his subordinates in the operation and carrying out of the said United States Grain Standards Act, all duties of grading and inspection and supervision which may be necessary or advisable at the local elevator, *is* expressly turned over to, and made the duty of state grading and inspection systems; that while the 1919 Grain Grading Act heretofore declared unconstitutional, was in force and effect in the State of North Dakota, no embarrassment or conflict occurred in connection with the enforcement of said Act with respect to the United States Grain Standards Act, and that at no time

was there any interference with the said United States Grain Standards Act, or any burden placed thereon, or any trouble or complaint in that connection from Federal officials engaged in the enforcement of the Federal Act, but that the two Acts actually operated harmoniously and supplementary to each other, and the attention and judicial notice of the court is called to the various and numerous official regulations and announcements issued by, and under the authority of, the Secretary of Agriculture under the United States Grain Standards Act, and particularly to exhibits A, B and C hereto attached and made a part hereof.

Section X.

That the said United States Grain Standards Act, and the North Dakota Grain Grading Act, have the same general purpose and object, to-wit, the promulgation and use of uniform grades and conditions of quality, as fixed by the United States Government.

That the said Federal Act and State Act occupy, and have reference to, wholly separate and distinct fields of operation, the said Federal Act being confined to supervision of grading and inspection at terminal points after shipment by a common carrier, and the State Act being confined to requiring that grading and inspection in accordance with the grades fixed by the Federal Act be had, before the grain moves from the local point of shipment in interstate commerce; that neither of these fields of operation is antagonistic to the other, nor is one dependent upon the other, but they are supplemental to each other.

Defendants further allege that when the said grain moves from the local shipping point in interstate commerce, the ownership of practically all of said grain has passed from the local farmer
42 producer to the elevator company, and all legal right, title or interest in said grain has been parted with by the farmer producer, and he is no longer legally or financially concerned with such grain or any dealings in it; that therefore the inspection and grading of such grain upon its arrival at the terminals is of no particular materiality or benefit to the farmer producer, but operates almost wholly for the benefit and protection of the elevator company which then and there owns and controls practically all of such grain, and is for the purpose of assisting and protecting said elevator company, in connection with its own sale and disposal of said grain, and that such inspection at such terminals cannot to any practicable extent whatever affect, protect or have reference to, any right or due to which the farmer producer may have been entitled; that therefore the said United States Grain Standards Act is not intended to, and does not to any extent whatever, furnish any aid, guide or protection to the farmer producer, and does not go into effect or operation so far as the marketing of the grain at the local elevator is concerned, except as the same is required under the terms of the North Dakota Act, and in direct accordance with its provisions and the rules and regulations thereafter issued under it, it is the aim and intent of the Federal authorities enforcing such Federal Act, that said State

Grain Grading and Inspection Department shall take charge of, and put in operation and effect such grading and inspection at local points as will assure and cause the farmer producer to receive grades and conditions of quality provided and fixed by the Secretary of Agriculture under the said United States Grain Standards Act, and that such local field is left entirely to State supervision and control.

That in various and numerous announcements of rules, regulations and directions issued by the Secretary of Agriculture, and his duly authorized assistants, specific and detailed directions and opinions have been given to all persons interested in the marketing of grain, that all supervisory and regulatory work at the points of local
43 shipment, to-wit, the local elevator, must be performed by and through the agency of State inspection systems, and that the Federal Act was not designed to, and had no intention of applying to the manner and details of the original marketing of grain at the local elevator.

Section XI.

Defendants further allege that under the provisions of paragraph 12 in the bill of complaint in this case it is admitted that in the absence of the North Dakota Grain Grading Act, there is, and will be, no supervision of grading and inspection within the State of North Dakota whatsoever, and that no supervision can, or will, be had of the grading and marketing of grain at any local elevator in the State of North Dakota.

It is further admitted in paragraphs 5 and 15 of the bill of complaint that practically all of the grain purchased by the plaintiff is purchased from local farmer producers at local elevator points, and that a difference frequently exists between the grades extended to such farmer producer at the local point by the elevator buyer, and the grade which such grain finally receives at the terminal point.

Defendants therefore allege that under the provisions of plaintiffs' bill itself, if the enforcement of the State grain grading law is restrained, no control or supervision over the grading and inspection of grain will or can be had within the State of North Dakota, and that said plaintiffs will therefore not be, in fact, required to give the producers of North Dakota the grades and conditions of quality required by the Federal Act, and therefore that the farmer producers of the State of North Dakota will be compelled to sell and dispose of their grain under the facts and circumstances, and with the attendant wrongs and evils hereinbefore mentioned and set forth, and defendants allege that by reason thereof the farmer producers of this State will lose and be defrauded of many millions of dollars pending a decision of this case upon the trial on the merits.

44 Section XII.

That the said United States Grain Standards Act contains no provisions requiring the plaintiffs or any other elevator company to account to the farmer producer for the valuable dockage contained

in said grain, and that such proposition is not within the purview of the Federal Act.

Defendants further allege, as they are informed and verily believe, that it has at all times, unless prevented by law, been the uniform practice of elevator companies, and persons buying grain for shipment, to take and appropriate all valuable dockage in grain purchased by them, without making any allowance therefor, or paying any compensation for the same, and that it has been the universal custom to reduce the grade of grain purchased because of the presence in said grain of dockage, and thereby paying a lower price for the grain purchased by reason of the same having been given a lower grade; and that in addition thereto it has been the uniform practice, unless restrained by law, for the elevator companies to take and appropriate all of such dockage as their own property. Defendants further allege that such dockage is in the great majority of cases of great value, having a definite ascertainable market value, and that the appropriation of said dockage by the said elevator companies has been for many years one of the great and serious wrongs and evils growing out of the marketing of grain in the State of North Dakota, and was one of the evils and wrongs which the present law was intended and designed to prevent. That under the provisions of plaintiffs' bill of complaint, it is alleged that the said dockage is now fully paid and compensated for, by the plaintiffs, in connection with the present grading and inspection of grain purchased, and defendants therefore allege that the requirements in the present law requiring such compensation, causes said plaintiffs no damage, if the allegations of the said bill are true, but, in that regard, your defendants state and allege that they are informed and verily believe that the statements in said bill with respect to payment for said dockage are not true and correct, and that the said plaintiffs will pay or compensate for no dockage whatsoever unless compelled to by the enforcement of the North Dakota Grain Grading Act.

That in requiring payment for such dockage, or a return of such dockage to the grain producer, the said North Dakota Act herein involved does not conflict with or interfere with the United States Grain Standards Act, which merely defines what dockage is, but that the said North Dakota Act is purely a police measure, enacted for the necessary protection of the people of the State, in order that the irreparable loss and damage to the grain producers of the State by reason of the appropriation of such dockage as aforesaid, may be prevented.

That the average price for dockage of value on the Minneapolis market for the year 1919, ranged from $29.56 per ton in September, 1919, to $40.45 per ton in June, 1920. That the elevator companies throughout the State of North Dakota at the time of the marketing of the 1920 wheat crop were compelled under the law then in force, to pay for dockage or return the same to the farmer, and that the first 45 elevators reporting to the state officials charged with the enforcement of such law, showed a total amount paid for dockage of $71,301.83, or approximately an average of $1,600.00 per elevator,

and that said amount ran as high as $18,000.00 paid by a single elevator for dockage during a single year.

That the average percentage of dockage per bushel in wheat and flax amounts to approximately eight per cent in a normal year.

Section XIII.

Defendants therefore allege that if the enforcement of the North Dakota Grain Grading Act is restrained pending a trial of the merits in the above entitled action, that there will be no control or supervision over the grading of grain in North Dakota whatsoever, and that there will be no responsibility on the part of the plaintiffs for the commission of the wrongs and evils hereinbefore set forth and alleged, and that the farmer producers in North Dakota will be wholly deprived of protection against such evils, and will be
46 necessarily defrauded of many millions of dollars.

Section XIV.

That the great majority of the elevators and other persons engaged in buying grain for shipment in North Dakota, buy large quantities of said grain on credit, and receive large quantities of said grain in storage against which such elevator company issues its storage tickets in the usual way. That under the provisions of the North Dakota Grain Grading Act herein involved, provision is made whereby such elevator company or other person buying grain for shipment who does not pay cash in advance for the grain so bought and shipped, and is required to file with the supervisor under the act a bond running to the State of North Dakota, with good and sufficient surety, in an amount sufficient to cover the value of all farm products bought and not paid for in cash, and in addition thereto an additional bond in a sum of not less than $5,000, conditioned upon the faithful performance of the duty of public warehousemen in accordance with the law of the State; that at the present time in the State of North Dakota, warehouses in the State are full of grain, and that the bond liability heretofore required from said elevator companies is only a small fraction of the liabilities of said companies under storage and warehouse receipts; that as defendants are informed and verily believe, many of the said elevator companies and other persons engaged in buying grain for shipment, are virtually insolvent, and without sufficient financial responsibility, and that many of such elevator companies and other persons engaged in buying grain for shipment, are indebted in connection with the purchase and storing of such grain in an amount many times greater than the amount of bond now provided for by law; that defendants verily believe that many of the grain producers of the State of North Dakota will lose the amounts represented by their storage and warehouse tickets, and will suffer great and irreparable loss in connection therewith if said elevator companies and other persons purchasing grain for shipment as aforesaid are not required by law to furnish sufficient and adequate

bond to properly guarantee to the grain producers of the
47 State full and prompt payment of all their liabilities in connection therewith, and that the interlocutory injunction prayed for by the plaintiff will prevent these defendants and the State of North Dakota, and the supervisor named in the State Act, from requiring such additional security, and from affording the grain producers of the State of North Dakota the necessary and vital financial protection which such additional security would give, and that if the said temporary injunction against the enforcement of this Act is granted and allowed by this Court upon hearing, that defendants verily believe that many hundreds of thousands of dollars will be lost to the grain producers of the State of North Dakota by reason of the financial inability and irresponsibility on the part of persons and elevator companies now generally engaged in the buying of grain in North Dakota, as hereinbefore set forth.

That during the year 1921, as defendants are informed and believe, large sums of money were lost by the farmers of North Dakota by reason of the failure of various persons and companies engaged in the elevator business, and the buying of grain, by reason of the financial irresponsibility of such persons and such elevator companies, there being no law in force requiring a proper and sufficient bond, and that the inclusion within the present North Dakota Grain Grading Act of the provision requiring a proper bond, as therein provided, was due wholly or in part to the said previous experience of the grain producers of North Dakota, as above stated.

Section XV.

Defendants further allege that if the said State Grain Grading Law is permitted to remain in force and effect pending a trial of said action on the merits, that no improper burden or interference will be caused thereby, to, or upon, the said plaintiffs; that the only obligations or duties which will be imposed upon the plaintiffs by reason of the enforcement of the law, will be to require, that, if said plaintiffs desire to engage in the business of grading grain upon the grades and conditions established by the Secretary of Agriculture,
48 that such plaintiffs and other elevator companies shall procure a license from either the state supervisor, or from the Secretary of Agriculture, and that such license is without any expense to the said plaintiffs, and is solely for the purpose of assisting the Federal and State officials in knowing who is engaged in the occupation of grading grain and of seeing that the grades and regulations fixed by the Federal Act are actually kept in force and effect in connection with the local marketing of grain, and the people of the state be afforded proper protection thereby. That in addition to the procurement of such license, it would be necessary for the plaintiffs to pay a reasonable elevator license fee fixed under the provisions of said Act at not to exceed One Dollar for each one thousand bushel capacity of such elevator, and that such license fee, in view of the

many and manifest duties and supervision thereof on the part of the State and its officers, is in all respects reasonable.

That in substance and effect the only requirement that will be placed upon the plaintiffs by the operation of the State Grain Grading Law will be to require said plaintiffs to honestly and fairly put and keep in force and effect the grades and conditions of quality fixed by the United States Grain Standards Act, and that if the said plaintiffs and other elevator companies and persons buying grain as aforesaid, intend to, and shall put and keep in full force and effect, the grades and conditions of quality as fixed by the Secretary of Agriculture under the United States Grain Standards Act, that no burden or inconvenience or injury will be visited upon the plaintiffs or any other persons under the provisions of the State Act, and therefore that to grant the prayer of the plaintiffs herein for the granting of a temporary injunction herein, asked for, would in its sole, natural and essential force and effect, aid and encourage the continuance and increase of the abuses and evils hereinbefore set forth so far as these plaintiffs are concerned, and permit them to be practicably free to refuse to put in force and effect the proper grades and conditions of quality fixed by the Federal Act.

49 Section XVI.

Defendants further allege that if the enforcement of the said North Dakota Grain Grading Act is restrained pending a trial of said action on the merits, that the prosperity of the entire state of North Dakota will be seriously and irreparably injured and damaged. That if the said plaintiffs and other elevator companies and persons operating in the State of North Dakota are permitted to buy and receive such grain, without any supervision or control over the grading and inspection thereof, and said elevator companies are excused from giving due and sufficient bonds, that the commission of the wrongs and evils hereinbefore set forth will be even more extreme and flagrant than has been the case in the past, and that by reason thereof the great majority of the people of the State of North Dakota will be directly defrauded of a large portion of the money which they would otherwise be entitled to receive for their grain, and that there would, therefore, so far as the farmer producer is concerned, be absolutely no chance or opportunity to recover the amount of the loss.

Section XVII.

Wherefore your defendants respectfully pray the court that the application of the plaintiffs for an interlocutory injunction may be denied, and that the defendants and the State of North Dakota, and its proper officials, may be permitted to carry on and enforce the provisions of the said North Dakota Grain Grading Act pending the trial of the above entitled action on the merits. Geo. F. Shafer, Attorney General; Seth W. Richardson, Special Assistant Attorney General, Attorneys for Defendants.

50 STATE OF NORTH DAKOTA,
County of ——, ss:

George Schafer, Attorney General, and Frank Milhollan, C. W. McDonnell and W. H. Stutsman, as members of the Board of Railroad Commissioners, being duly sworn on their oath state that they have read the foregoing answer of the defendants to the order to show cause heretofore issued in the above entitled action, and that the matters and things set forth therein are true to their own knowledge, except as to the matters therein alleged on information and belief, and as to those matters they believe the same to be true. Frank Milhollan. C. W. McDonald. Fay Harding, Successor to W. H. Stutsman.

Subscribed and sworn to before me this 4th day of January, 1923. S. G. Severtson, Notary Public, State of North Dakota. (Seal.) My commission expires January 11th, 1924.

STATE OF NORTH DAKOTA,
County of ——, ss:

George F. Shafer, Attorney General, and Frank Milhollan, C. W. McConnell and W. H. Stutsman, as members of the Board of Railroad Commissioners, being duly sworn on their oath state that they have read the foregoing answer of the defendants to the order to show cause heretofore issued in the above entitled action, and that the matters and things set forth therein are true to their own knowledge, except as to the matters therein alleged on information and belief, and as to those matters they believe the same to be true. Geo. F. Shafer.

Subscribed and sworn to before me this 5th day of January, 1923. Seth W. Richardson, Notary Public, Cass Co., N. D. (Seal.) Com-Exps. Oct. 26-27.

51 **Exhibit A to Answer.**

Portions of Exhibit A Designated and Stipulated to be Incorporated Into the Record on Appeal.

United States Department of Agriculture,

Bureau of Markets,

Charles J. Brand, Chief.

Service and Regulatory Announcements.

No. 36.

Federal Grain Supervision and the Standards for Wheat Applied to 1917 Crop of Hard Spring Wheat, Including Comparison of Present and Revised Official Standards.

* * * * * * *

(Page 2.)

The Federal Government grades for hard red spring wheat were put into effect on August 1, 1917, under the United States Grain Standards Act. This Act passed on August 11, 1916, authorizes the Secretary of Agriculture to establish grades for the various grains and to enforce uniform inspection and grading of such grains when shipped in interstate or foreign commerce.

Inspections for the purpose of the Act are performed by grain inspectors licensed by the Secretary of Agriculture. These inspectors are not employed by the Federal Government. They work either independently or are employed by the various grain exchanges or State Inspection Departments, and are not paid by the Federal Government. They cannot hold licenses to grade grain and at the same time be financially interested in the buying or selling of grain, or be in the employ of any person or firm financially interested in the buying or selling of grain. No person is permitted to inspect and certificate the grade of wheat for shipment in interstate or foreign commerce unless he holds a license under the grain
52 standards Act. The work of the licensed inspectors is under the direct observation of thirty-five Federal Grain Supervision offices maintained by the Department of Agriculture at important grain-inspection points.

In cases where the owner of wheat shipped in interstate commerce, or any other interested party, is dissatisfied with the grade given by the licensed inspector an appeal may be filed in the office of Federal Grain Supervision in charge of the District in which the grain was graded, in accordance with the regulations of the Secretary of Agriculture. In cases where the wheat is shipped in interstate commerce between non-inspection points, without inspection by a licensed inspector, disputes as to the proper grade of the wheat may be filed in the office of Federal Grain Supervision for the district in which the wheat is located, in accordance with the regulations of the Secretary of Agriculture. Employes of the Department of Agriculture do not inspect and grade grain for the public generally, and grain supervisors can grade grain for interested parties only in cases of appeals and disputes filed in the offices of Federal Grain Supervision as above indicated.

The principal purpose of the Grain standards Act is to provide for the establishment of standards for each class of wheat, or other grain as the case may be, to be effective for the inspection and grading of such grain at all markets in the United States, and for the supervision of inspection and grading under those standards so that any particular lot of grain should be given the same grade anywhere in the United States.

* * * * * * *

(Pages 9, 10, 11 and 12 preceding the Line "Revised Wheat Standards Effective July 15, 1918.)

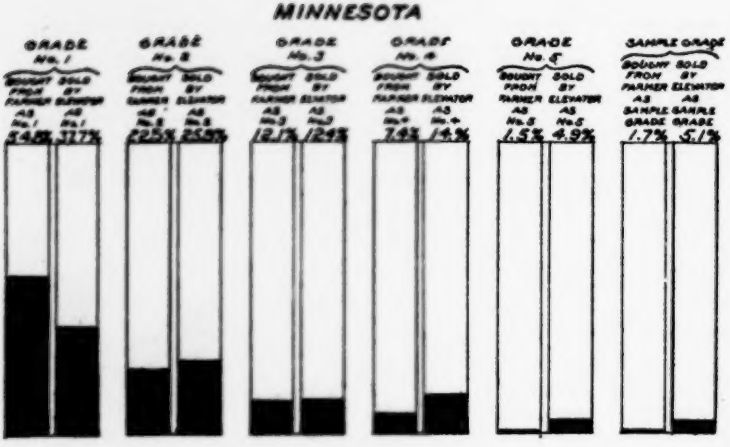


FIG. 6.

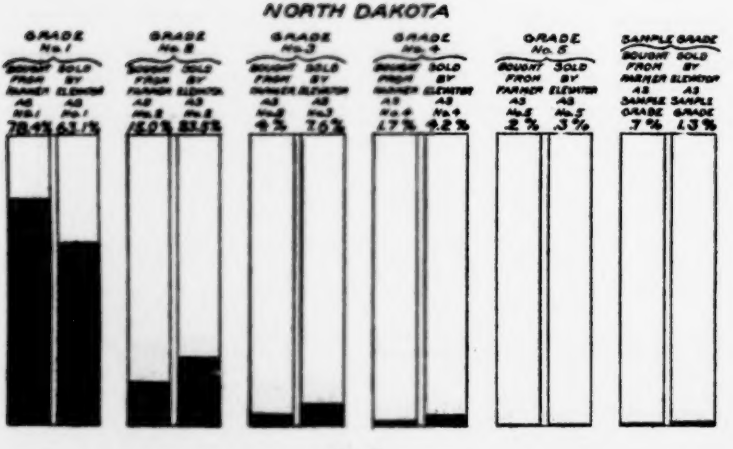
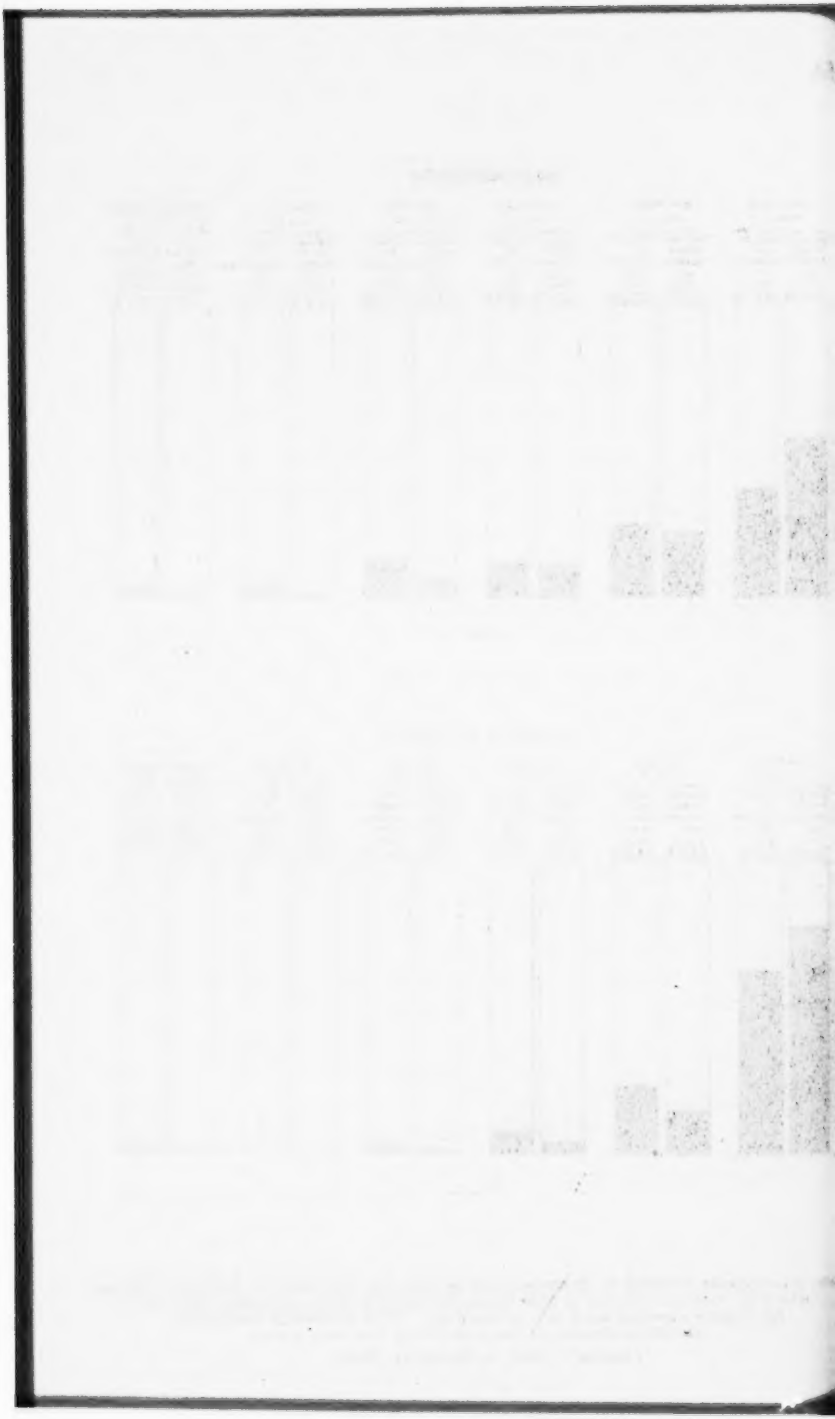


FIG. 7.

FIGS. 6-7.—Grades received by farmers upon delivery of 1917 crop of Hard Red Spring wheat at country elevators in Minnesota and North Dakota, and grades received by country elevators upon sale or shipment. (The percentage marks indicate the proportion of the crop falling into each grade.)

(August 1, 1917, to March 31, 1918.)



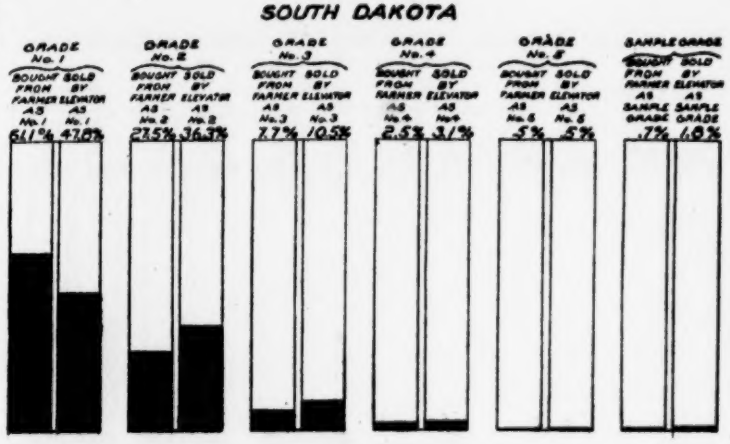


FIG. 8.

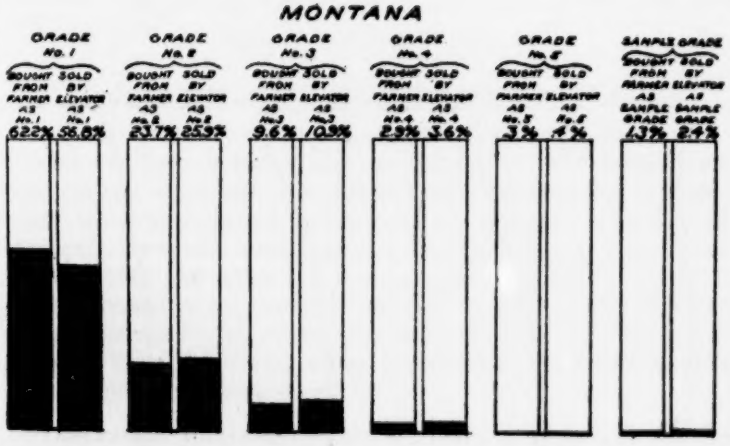


FIG. 9.

FIGS. 8-9—Grades received by farmers upon delivery of 1917 crop of Hard Red Spring wheat at country elevators in South Dakota and Montana, and grades received by country elevator, upon sale or shipment. (The percentage marks indicate the proportion of the crop falling into each grade.)

(August 1, 1917, to March 31, 1918.)

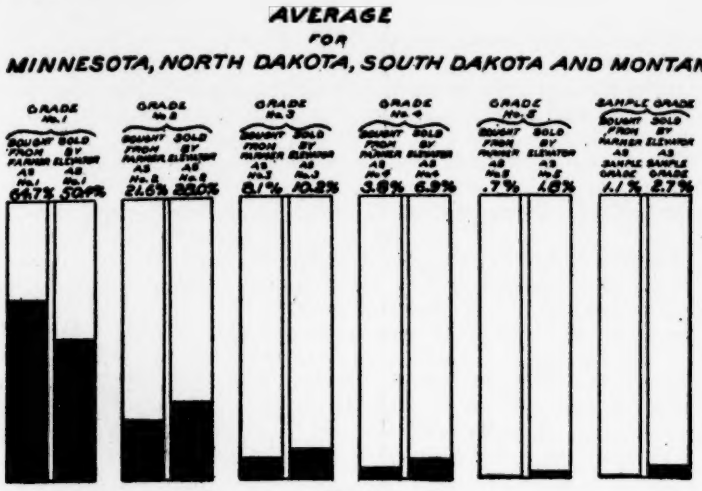


FIG. 10.

FIG. 10.—Average of grades received by farmers upon delivery of 1917 crop of Hard Red Spring wheat at country elevators and grades received by country elevators upon sale or shipment. (The percentage marks indicate the proportion of the crop falling into each grade.)

(August 1, 1917, to March 31, 1918.)

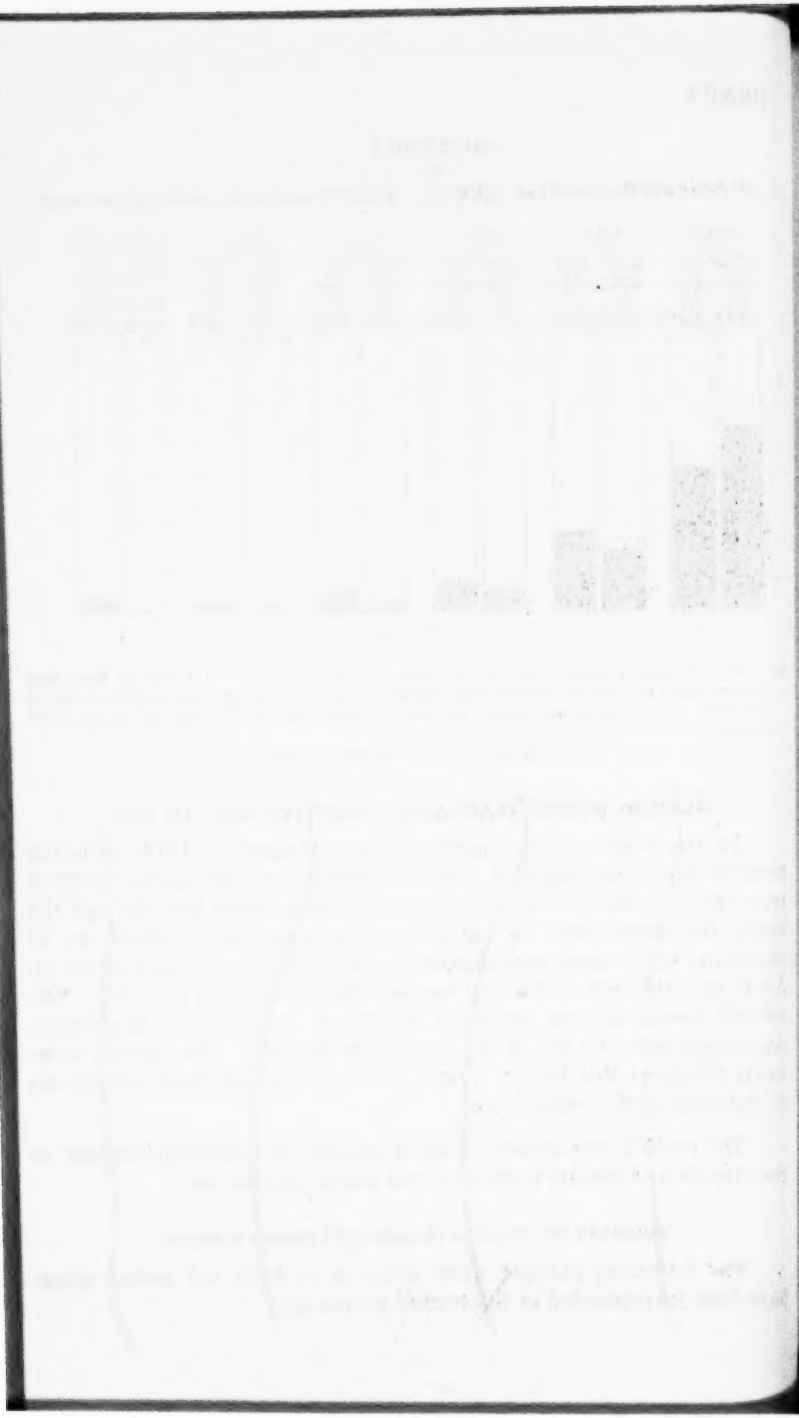
REVISED WHEAT STANDARDS EFFECTIVE JULY 15, 1918.

As the result of its experience since August 1, 1917, with the present standards, together with the suggestions and advice received from farmers and others at numerous public hearings and through the mails, the Department of Agriculture has prepared a revised set of standards which were promulgated by the Secretary of Agriculture on April 13, 1918, and which will become effective on July 15, 1918. The revised standards are published in full in Service and Regulatory Announcements No. 33, of the Bureau of Markets. The revised standards for Hard Red Spring wheat, tabulated and abridged, are shown at the back of this publication.

The revised standards contain a number of important changes in the direction of greater simplicity and easier application.

SUMMARY OF CHANGES IN HARD RED SPRING WHEATS.

The following changes with reference to hard red spring wheat have been incorporated in the revised standards:



53 Grades Received by Farmers from Country Elevators.

The grades in use prior to the 1917 crop embraced such uncertain and indefinite terms as "dry," "sound," "clean," etc., and each inspection department maintained its own interpretation of these terms. Under the Federal system, a single set of wheat standards is in use at all inspection points in the United States, and the personal element and uncertainty in grading are reduced to the minimum because definite limitations for the various factors are set forth in the standards and the application of these limitations is supervised by Federal Grain Supervisors.

Farmers shipping grain in carlots directly to terminal markets receive the benefit of the grades assigned by licensed inspectors, while the farmers selling wheat to the local elevators do not, as a rule, have this advantage and must accept grades assigned by the buyer or elevator man. With definite standards, the country buyer should no longer be compelled, in order to protect himself, to make allowances for such variations in the grading of grain at the terminal markets as have heretofore been made. There is no satisfactory reason why any country buyer cannot familiarize himself with the grades and apply them properly.

The Department of Agriculture in co-operation with the Federal Trade Commission has undertaken to determine the numerical grade of hard red spring wheat assigned to farmers' wheat by country elevators in the States of Minnesota, North Dakota, South Dakota and Montana on the 1917 crop handled to March 31, 1918, under the Federal grades, and also to determine the numerical grades assigned to such wheat going from these elevators by licensed inspectors at the terminal markets.

This information was secured directly from the country elevators in these States, which were required under the law to submit certified reports under penalty of fine or imprisonment. The diagrams (figs. 6 to 10) show the proportion of the hard red spring crop of 1917 (all subclasses combined) to March 31, 1918, which fell into each of the grades, as received from the farmer at the country elevator. Figures 6 to 10 also compare the proportion of the same crop as shipped from the same country elevators which fell into each of the grades as assigned by the licensed inspectors at the terminal markets or as sold by the country elevators by grade without inspection by licensed inspectors.

(Here follow diagrams marked pages 54-57, inc.)

58 **Exhibit B to Answer.**

Portions of Exhibit B Stipulated and Designated to be Incorporated Into the Record on Appeal.

(The First and Cover Page and Page 2.)

United States Department of Agriculture,

Bureau of Markets,

Charles J. Brand, Chief.

Service and Regulatory Announcements.

No. 481.

How Northwest Wheat is Grading at Terminals.

The object of this announcement is merely to show in a brief, concise way how wheat is grading in the Northwest under the official grain standards of the United States for wheat, in order that the farmers and country shippers may determine for themselves whether or not the Federal system is satisfactorily meeting their needs.

The Federal wheat grades for Hard Red Spring wheat are not working to the detriment of producers. An extremely large percentage of the wheat is receiving high grades at the terminals where it is inspected. If the buyer contends that he has to grade good wheat down "because the Federal grades require it" it is probably because he is not actually grading the wheat at all or is not assigning the grades correctly.

(Page 2.)

Wheat Grading at Minneapolis and Duluth.

When the farmer hauls his wheat to the station and sells it to the local elevator, a grade is placed upon it by the elevator manager and not by a licensed inspector because few inspectors are located at country points. This is true under the state grading systems as well as under the Federal grades.

Unless the grain is ground at the local mill, it is finally shipped to the terminal market, where it is graded by a disinterested inspector who is licensed by the Secretary of Agriculture. In deciding the grade, the inspector uses the grades established by the United States Department of Agriculture—the Federal grades.

59 In enforcing the grain standards Act the authority of the Federal Government reaches only shipments of grain in interstate commerce—from one state to another—or to foreign countries. It does not control the sale of wheat by grade if the sale itself does not involve a shipment to or through another state or to a

foreign country. But the Department of Agriculture, under the authority conferred by Congress to supervise the work of the licensed inspector, does control his work and sees that it is properly done. He is not allowed to contonue to inspect unless he is competent. If he is employed in any elevator or mill or has any connection with the buyong or selling of grain, he cannot secure a license and if he does not do satisfactory work his license may be suspended or revoked.

The Department cannot, however, control the country buyer or elevator man, or the miller who buys grain on the spot. Such transactions are in intrastate not interstate commerce. While the buyer may be using Federal grades. his grading is not under the jurisdiction of the Department. If he does not assign the grades honestly, fairly, and accurately, the state officials only can reach him. Practically all of the grain from Minnesota and North Dakota, and a large part of that from South Dakota, is eventually shipped to either Minneapolis or Duluth and it is there graded by inspectors.

This announcement shows the results of wheat grading at Duluth and Minneapolis. For the purpose of the announcement, inspections between July 15, 1918, and December 31, 1918 are taken into account, as the revised Federal grades became effective on July 15, 1918.

With the exception of Durham, practically all of the wheat produced in Minnesota, North and South Dakota, is Hard Red Spring wheat. This report is confined to the Hard Red Spring wheat and to inspections as the grain arrived at Minneapolis and Duluth.

60

Exhibit C to Answer.

Portions of Exhibit C Stipulated and Designated to be Incorporated Into the Record on Appeal.

(The First and Cover Page and Page 2.)

United States Department of Agriculture,

Bureau of Markets,

Charles J. Brand, Chief.

Service and Regulatory Announcements.

No. 541.

How Hard Red Winter Wheat is Grading under Federal Standards.

By John F. Wilmeth.

The purpose of this announcement is to show in a brief way the results of the grading of Hard Red Winter wheat by licensed grain inspectors under the Federal grades and the factors in the standards which have determined the grades assigned to this wheat.

(Page 2.)

In addition to fixing the grades for wheat, the Department of Agriculture is charged under the United States grain standards Act with the issuing of licenses to inspectors who grade grain under the standards and also with supervising the work of the inspectors. In enforcing the provisions of the Act, the Government's direct authority reaches only shipments of grain in interstate commerce—grain moving by grade from one state to or through another—or to foreign countries. The grain standards Act requires the use of the Federal grades only in connection with interstate shipments,
but these grades have been adopted in practically all states for
61 the grading of locally handled wheat. After the grades are established and put into effect, the function of the Department of Agriculture is to require these interstate shipments to be inspected by one of these licensed inspectors, if the shipment is made by grade from or to a point where there is an inspector, and then to see that the inspector does his work properly. The Department does not allow the inspector to continue to inspect if he is found to be incompetent. If he is employed by any elevator or mill, or has any connection with the buying or selling of grain, he cannot receive a license, and if he does not do satisfactory work his license may be suspended or revoked.

When the farmer hauls his wheat to a station in his own state and sells it to the local elevator, although it is bought and paid for by grade, he is making a transaction which does not require an interstate shipment. The grade in these cases is usually placed upon the wheat by the elevator manager. It is not then graded by a licensed inspector because the inspectors seldom are located at country points. This feature, is unfortunate, but the volume of inspection work at any one country shipping point is hardly ever large enough or continues over a sufficiently long period of time to warrant inspectors in taking up work at such points. Therefore, the correct grading of wheat at country points is usually a matter between the farmer and the local buyer and is one with which local authorities and not the Department of Agriculture can deal.

Unless this wheat is ground at a local mill in most cases it is finally shipped to a terminal market, where it is graded by a disinterested inspector who is licensed by the Department of Agriculture, and in deciding the grade of the wheat he uses the grades established by the United States Department of Agriculture—the Federal wheat grades.

62 Indorsed on back as follows: (Title of case.) Due and personal service of the within answer is hereby admitted this 5th day of June, 1923, by delivering of copy at Fargo, N. D., Lancaster, Simpson, Junell & Dorsey, H. A. Libby, Attorneys for Plffs.

[File endorsement omitted.]

63 In United States District Court.

(Title of Case.)

Interlocutory Injunction.

[Filed Jan. 5, 1923.]

The motion of the plaintiffs herein for an interlocutory injunction restraining the enforcement of a law of the State of North Dakota, known as the North Dakota Grain Grading Act, came on regularly before this Court, consisting of three judges, the Honorable William S. Kenyon, Circuit Judge, and Honorable J. W. Woodrough and the Honorable J. S. Elliott, District Judges, at Fargo, North Dakota, on the 5th day of January, 1923, pursuant to call duly made and notice duly given. Messrs. Lancaster, Simpson, Junell & Dorsey, and H. A. Libbey, Esq., appeared for the plaintiffs in support of said application for a temporary injunction, and Seth Richardson, Esq., and Honorable George F. Shafer, Attorney General, appeared for the defendants, in opposition to the granting of said injunction, and the Court having duly considered the bill of complaint and answer herein and the arguments of counsel, and it appearing that since the commencement of this action John N. Hagan was appointed State Supervisor of Grades, Weights and Measures under said Act, and said motion having been submitted to said court,

Now, Therefore, it is ordered, That the defendants and each of them, and the said Hagan, as Supervisor, and their respective agents, agents, servants and employes, be restricted and enjoined during the pendency of this action from enforcing, or attempting to enforce against the plaintiffs herein, the provisions of the said North Dakota Grain Grading Act, adopted at the general election in the State of North Dakota, in November, 1922, or any rules or regulations heretofore or hereafter established, or which may be Estab-
64 lished thereunder, and from instituting against the plaintiffs herein, or their employes, or any of them, criminal prosecutions, or other proceedings at law, for any alleged violation of said law, rules, or regulations, and from in any manner whatsoever interfering with the plaintiffs herein, in the buying and handling of grain, or in conducting their respective grain elevator business, as heretofore, in the State of North Dakota, and from taking any actions that would tend in any manner to interfere with said grain business in said State, under and by virtue of any power or authority attempted to be conferred by said law, or by any rules or regulations promulgated under said law, provided that the proper officers and agents of the State of North Dakota may, in accordance with the provisions of the act, require from persons or corporations engaged in the buying of grain on credit in the State of North Dakota suitable and sufficient bonds for the purpose of securing full payment

of the amounts due for grain so purchased, and as evidenced by storage and warehouse receipts outstanding.

It is further ordered, That plaintiffs furnish to defendants an undertaking in the sum of $10,000., protecting defendants against loss or damage by reason of said injunction, which undertaking shall be executed by some responsible surety company, and may be approved by J. A. Montgomery, Clerk of this Court, and filed within ten days from this date.

Dated January 5, A. D., 1923. Wm. S. Kenyon, United States Circuit Judge. Jas. D. Elliott, J. W. Woodrough, United States District Judges.

[File endorsement omitted.]

65 In United States District Court.

(Title of Case.)

Indemnity Bond.

[Filed Jan. 15, 1923.]

Know all men by these presents, That we, the undersigned, all of the plaintiffs named in the above entitled action and in plaintiffs original bill of complaint, as principals, and Hartford Accident & Indemnity Company of Hartford, Conn., as surety, are held and firmly bound unto the defendants named in the above entitled action and their successors in office in the sum of $10,000.00, lawful money of the United States to be paid to the said defendants, or their successors in office, for which payment well and truly to be made we do jointly and severally bind ourselves, our successors and assigns, firmly by these presents.

Sealed with our seals and dated this 8th day of January, A. D. 1923.

Whereas, the plaintiffs named in the above entitled action made motion in said court for an Interlocutory Injunction against the said defendants, their attorneys and agents, restraining them from putting into force in any manner, the initiated measure known as "The North Dakota Grain Grading Act" which was adopted at the general election in the State of North Dakota in 1922, pending this action and until final determination thereof, and

Whereas, said motion came on before the court at Fargo, North Dakota, on January 5, 1923, the Hon. William S. Kenyon, U. S. Circuit Judge and J. W. Woodrough and J. S. Elliott, U. S. District Judges, presiding, when said motion was duly argued and submitted, and an order duly issued and signed by said Judges on said day and filed with the Clerk of said Court in his office at Fargo, North Dakota, granting plaintiffs said motion and issuing an Interlocutory Injunction against each and all of the defendants, restraining them, their attorneys and agents from attempting to enforce the said North

Dakota Grain Grading Act or any of its provisions, pending this action and until final determination thereof, and

66 Whereas, said order was duly served on said January 5, 1923, by service upon defendants' attorneys at Fargo, North Dakota, and,

Whereas, it is provided by said order that plaintiffs execute in behalf of defendants a bond in the sum of $10,000.00, protecting defendants against loss or damage by reason of the issuance of said injunction, which bond it is provided shall be approved by the Clerk of said court and filed in his office.

Now, therefore, in consideration of the premises, we, the undersigned do hereby undertake, promise and agree to and with the defendants and their successors in office, that we will hold the said defendants harmless and protect them from any loss or damage by reason of the issuance of said Interlocutory Injunction, and that said plaintiffs will abide the order of the court made herein in all respects,

Conditioned, however, that our liability hereunder shall not exceed the sum of $10,000.00.

Witness, the hands and seals of said parties this 8th day of January, 1923. Farmers Grain Company of Embden, a Corporation, et al., Plaintiffs, by H. A. Libby, Attorney of Record for North Dakota. Hartford Accident & Indemnity Company, a Corporation, by J. O. Lummis, Attorney. By W. R. Liedike, Attorney, [Corporate Seal.]

STATE OF NORTH DAKOTA,
County of Grand Forks, ss:

Be it known that on this 8th day of January, 1923, before me the undersigned, a Notary Public in and for said County and State personally appeared H. A. Libby, known to me to be one of the persons who executed the foregoing undertaking in the name and for and on behalf of plaintiffs, as attorney of record for plaintiffs within the State of North Dakota, and he acknowledged to me that he executed the same in the name of the plaintiffs and as their attorney of

67 record within the State of North Dakota, and as and for the act and deed of said plaintiffs. P. A. Lee, Notary Public, North Dakota. [Seal.] My Comm. Expires March 20, 1923.

STATE OF CONNECTICUT,
County of Hartford, ss:

On January 11th, 1923, before me personally came J. O. Lummis, to me known, who, being by me duly sworn, did depose and say, that he resides in the City of Hartford; that he is the Attorney of the Hartford Accident and Indemnity Company, the corporation described in and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order; and the said J. O. Lummis further said that he is ac-

quainted with W. R. Liedike, and knows him to be the Attorney of said company; that the signature of the said W. R. Liedike subscribed to the within instrument is in the genuine handwriting of the said W. R. Liedike and was subscribed thereto by him by like order of the Board of Directors and in the presence of him, the said J. O. Lummis. Ray W. Dexter, Notary Public. [Seal.]

(Here follows Resolution of Company.)

[File endorsement omitted.]

68 In United States District Court.

(Title of Case.)

Reply.

[Filed Jan. 22, 1923.]

Come now the plaintiffs herein, and each of them, and for their reply to the answer and return of the defendants to the order heretofore made and entered herein directing the defendants to show cause why an interlocutory injunction should not issue in the above entitled action, as prayed by the bill of complaint herein, show the Court as follows:

I.

Deny each and every allegation, matter and thing alleged or contained in said answer or return except such allegations thereof as admit any of the allegations of the bill of complaint herein and except as hereinafter admitted or otherwise qualified or explained.

II.

Admit that George Schafer is now the duly elected and acting Attorney General as successor to the defendant Sveinbjorn Johnson as Attorney General, and that Fay Harding is now a duly elected and acting member of the Board of Railroad Commissioners as successor to the defendant W. H. Stutsman; and allege that John N. Hagan, a citizen of the State of North Dakota, purports to be the duly appointed, qualified and acting State Supervisor of Grades, Weights and Measures pursuant to the provisions of the North Dakota Grain Grading Act herein involved, and that it is claimed that said John N. Hagan was appointed as such by the Board of Railroad Commissioners of the State of North Dakota prior to the service upon
69 the defendants of notice of the issuance of a temporary restraining order herein, but that the plaintiffs have no knowledge or information sufficient to form a belief as to the truth or falsity of said facts and claim and therefore deny the same and each thereof; that said John N. Hagan, by reason of the facts hereinabove

set forth, is a proper party defendant in this action and should be impleaded as a party defendant herein.

III.

Allege that the difficulties, evils and abuses alleged in said answer or return to have grown up, flourished and become notorious throughout the State of North Dakota do not in fact exist; that the North Dakota Grain Grading Act of 1919, which, as alleged in the bill of complaint and admitted in the return or answer herein, has been held unconstitutional by the United States Supreme Court, was in fact adopted as a political measure and was only enforced for political purposes where such enforcement could be used as propaganda for the political party then in power and not otherwise; that the provisions of said 1919 Act and the rules and regulations promulgated thereunder by the Grain Inspection Department of the State of North Dakota were not indiscriminately enforced, but were administered with a view to furthering the interests of the political party then in power and discriminating against the line elevator companies and certain independent or farmers elevator companies and in favor of certain other independent or farmers elevator companies; that by reason thereof, the said 1919 Act and the rules and regulations promulgated thereunder resulted in heavy additional and unnecessary burdens upon the elevator companies and grain dealers in North Dakota who were thus discriminated against; that in effect the 1922 Grain Grading Act, which is the Act herein involved, was enacted for the same purpose and will be enforced and administered in the same partisan and discriminatory manner as the 1919 Act; that the Supervisor of Grades, Weights and Measures under the 1922 Act is invested with the same unlimited powers as was the Inspector of Grades, Weights and Measures under the 1919 Act; that the 1922 Act is in its creation and will be in its operation purely political; that, as indicated by the administration of the 1919 Act, the 1922 Act will be and is inherently capable of being administered in such a manner as to lead to innumerable discrimination and petty extortions; that it will cause continual controversies; that as between different types of elevators and the different political affiliations of the owners thereof there has not been and will not be any uniformity in the administration of grain grading laws in the State of North Dakota.

IV.

Allege that in the State of North Dakota there are three general types of elevator companies,—the line elevator companies, that is, companies owning and operating several elevators; the independent elevator companies owning and operating single elevators, the farmers co-operative elevator companies, the stockholders in which are grain producers and which companies do not operate for the purpose of making a profit because any profit is distributed to the stockholders in the form of patronage dividends; that about one-third of

the North Dakota grain is handled by the line elevator companies; that considerably more than one-third is handled by farmers co-operative elevator companies; that at most of the important grain shipping stations in North Dakota there are farmers co-operative elevator companies; that other elevators at such stations must buy grain in competition as to grades, weights and dockage and as to price with these farmers co-operative elevator companies; that the grain producers themselves are therefore competitive dealers and buyers; that the competition thus produced is far more effective and impartial in preventing fraud and unfair dealing in purchasing grain at country stations than any Statute, rules or regulations of the State of North Dakota.

V.

That the provisions of the 1922 Grain Grading Act requiring the buyer of grain to make a specific payment on account of dockage at its market value, or to return such dockage to the seller, and authorizing the Supervisor of Grades, Weights and Measures to regulate and prescribe the margin which the buyers of grain shall be permitted to take and requiring buyers of grain to take out a license and requiring buyers of grain who do not pay therefor in cash to furnish bonds are not rendered necessary or desirable by existing conditions; that the evils, abuses wrongs and offences alleged in said answer or return as the basis for the 1922 Act do not in fact exist.

71 VI.

Allege that heretofore, during the times when there has been no Grain Grading Act in force in the State of North Dakota, grain purchased in said State at country elevators or elsewhere, has not been under-graded, over-docked or under-weighed, but in fact, generally, either through over-grading, under-docking or overweighing there is a loss to the grain dealer represented by the difference between the country elevator standard and the terminal standard as established by Federal Inspection; that at most stations in the State of North Dakota and in other grain producing States two or more competing elevators are located and that stations are usually near enough together so that there is competition for a producer's grain between two or more stations; that by reason of this competition, for many years last past fair and adequate prices have been obtained by producers of grain therefor and in the matter of grade, dockage and weight said grain has as a rule been over-estimated at country points; that comparing the grade, dockage and weight given grain by buyers at country elevators with the grade, dockage and weight given the same grain under Federal inspection at terminal markets, the grade, weight and dockage at the terminal market show a loss; that this was found to be fact by the Federal Trade Commission after a careful investigation made immediately prior to September 15th, 1920, and it is stated in the report of the Federal Trade Commission on the grain trade, dated September 15th, 1920, at page 202, Vol. 1, that

"As shown by the table, however, the grand total loss on grading, weighing and docking combined amounted to $83,337.22, or a loss of 0.35 of a cent per bushel";

that as shown by the context in said report, the term "loss" is applied to the loss in grade, dockage and weight of the grain dealer buying grain at country points and selling it at the terminal markets under Federal inspection; that grain carrying valuable dockage commands a premium both at country points and at the terminal markets; that this premium measures fairly the actual net value of the dockage after the deduction of freight and cleaning charges.

***

72 Allege that the statements contained in said answer or return that in the absence of control and supervision by the State of North Dakota over the marketing of grain the elevator companies and other persons buying grain for shipment have been accustomed to and at the present time do take from the producer of said grain an unfair and unreasonable margin of profit in view of the prevailing price of such grain at the terminal markets and the actual cost and expense of handling the same are not in accordance with the facts; that under the 1919 Act the Grain Inspection Department of the State of North Dakota fixed the sum of six cents (6¢) per bushel as a reasonable margin of profit; that in many instances during the seasons of 1921 and 1922, when the purchase and shipment of grain was not subject to any control or regulation by the State of North Dakota, elevator companies in said State repeatedly bought and handled grain on a margin of four cents (4¢) and not to exceed five cents (5¢) per bushel; that by reason of the competition existing between elevators located at the same station and between stations which are near one another and by reason of the desire on the part of elevator companies to command and retain the farmers in the vicinity of their elevators as clients, the buyers at elevators have invariably taken a margin of profit which is as small as it is possible to take and still continue to carry on the business of operating elevators with a fair return on the capital invested therein.

That the objections of the plaintiffs herein to the 1922 Act are not based upon the requirement thereof that buyers pay a full and fair value for the grain purchased or the dockage contained therein, or the requirement that the buyers of grain shall be competent and shall correctly grade the grain they purchase, or the requirement therein that grain purchased on credit shall be paid for, or any of said requirements; that the plaintiffs and other grain dealers in the State of North Dakota have at all times met and satisfied all of said requirements and will continue to do so irrespective of the validity of said 1922 Act; that it does not follow and is not a fact, as alleged in said answer or return, that because the plaintiffs do not object to performing any specific requirement of said 1922 Act said Act and its enforcement would not cause the plaintiffs any damage; that said Act is objectionable for the reason that it is an interference with free

interstate commerce in grain; that it places the employees of
73 a grain buyer under the domination and control of officials of the State of North Dakota; that it enables the officials of the State of North Dakota to arbitrarily fix the prices at which grain may be bought without any reference to the market value thereof; that it enables the officials of the State of North Dakota to discriminate between certain favored elevators or elevator companies and other elevators or elevator companies; that it enables the officials of the State of North Dakota, after grain has been bought at a price agreed upon between the buyer and seller, unless a specific payment has been made for dockage contained therein, to compel the buyer, on pain of forfeiture of his license, to pay to the seller, in addition to the agreed price paid for the grain, a price fixed by the officials of said State as the value of such dockage, even though the value of such dockage was covered by a premium price paid for said grain, or even though the seller at the time the grain was sold stated that he did not want the dockage separated from the grain and returned to him; that in each particular instance, no matter how unwarranted such demands or requirements may be, it is usually easier and less expensive to comply with such demands and requirements rather than to go to the expense of an appeal to a partisan and prejudiced State Supervisor.

VIII.

Allege that the grading of grain cannot be done with mathematical certainty but necessarily involves the exercise of judgment and opinion on the part of those making the inspection; that competent and experienced inspectors will frequently give to the same grain different grades because of a difference in the judgment and opinion of the individual inspectors; that this is especially true if either of the inspectors has a tendency or inclination to give to the grain either a high or a low grade; that such differences in judgment or opinion as to the proper grade which should be given to grain can be reconciled and determined only by an appeal to some authoritative tribunal or individual; that under a dual system of inspection such as would be created if both Federal inspectors and inspectors licensed by the State of North Dakota inspect and grade the same grain, there will necessarily result frequent differences in the grade given the same grain at the time it enters interstate commerce by the purchase thereof in North Dakota and at the time it is sold at the terminal markets in Minnesota or elsewhere, and that the same will be true as to
74 dockage; that by reason thereof the 1922 North Dakota Grain Grading Act and the United States Grain Standards Act are in direct conflict and cannot be harmoniously administered together; that by reason of said facts the enforcement of the North Dakota Grain Grading Act will render interstate commerce in grain uncertain, difficult and subject to unnecessary risks and burdens.

IX.

Allege that the North Dakota Grain Grading Act is designed to compel any person desiring to engage in the business of buying grain

in North Dakota to secure from the Supervisor of Grades, Weights and Measures a license and to pay therefor; that the license fees nominally imposed by the 1922 Act on warehouses are the only source of revenue provided for the administration of this act; that heretofore an average fee of Six Dollars ($6.00) per year for each warehouse has provided ample funds for the administration of the rules and regulations governing the operation of warehouses; that the average capacity of country elevators in North Dakota is approximately thirty thousand (30,000) bushels; that under the 1922 Act the Supervisor of Grades, Weights and Measures is authorized to fix a warehouse fee of One Dollar ($1.00) per thousand bushels of capacity, or an average fee of Thirty Dollars ($30.00) per year per warehouse; that the difference between an average fee of Six Dollars ($6.00) per year and Thirty Dollars ($30.00) per year, to-wit, the sum of Twenty-four Dollars ($24.00) per year, is in effect and in fact to be paid under the 1922 Act as a fee for the buyer's license although nominally imposed as a warehouse fee.

Wherefore, the plaintiffs pray that the relief prayed for by the bill of complaint hereby be granted, and further that John N. Hagan, a citizen of the State of North Dakota, purporting to act as State Supervisor of Grades, Weights and Measures, be impleaded herein as a defendant by order of the Court. Lancaster, Simpson, Junell & Dorsey, 630 First National-Soo Line Bldg., Minneapolis, Minnesota; H. A. Libby, Grand Forks, North Dakota, Attorneys for Plaintiffs.

75 STATE OF NORTH DAKOTA,
County of Grand Forks, ss:

R. F. Gunkelman, being first duly sworn, says that he is an officer, to-wit the secretary, of Grandin Farmers Grain Company, one of the plaintiffs named in the above entitled action; that he has read the foregoing reply and knows the contents thereof and that the same is true of his own knowledge, except as to those matters therein stated on information and belief and as to those matters that he believes them to be true. R. F. Gunkelman.

Subscribed and sworn to before me this 15th day of January, 1923. R. A. Lee, Notary Public, N. D. (Seal.) My com. expires March 20, 1923.

Indorsed on back as follows: (Title of case.) Reply. Service of the within reply is hereby admitted this 19 day of January, 1923. Seth W. Richardson, Attorney for Defendants.

[File endorsement omitted.]

Attached to said reply is a letter in words and figures following to-wit:

75½ Law Offices of Hiram A. Libby,
Suite No. 515,
Northwestern National Bank Building,
Grand Forks, N. D.
20 January, 1923.

Hon. J. A. Montgomery, Fargo, North Dakota.

DEAR SIR: In the case of Farmers Grain Co., of Embden, et al., v. Sveinbjorn Johnson, Attorney General, et al., I herewith hand you plaintiffs' reply to the defendants' answer, and will ask that you please file this with the other papers in the case.

Mr. Richardson has informed me that they desire to regard the answer to the Order to Show Cause now on file in your office, as their answer on the merits, and therefore it is to this answer that we file this reply. Yours very truly, H. A. Libby. HAL:HB. CC:S. CC:R.

76 In United States District Court.

(Title of Case.)

Plaintiffs' Præcipe on Appeal.

[Filed Mar. 19, 1923.]

To the Clerk of the District Court of the United States, District of North Dakota, Southeastern Division:

Please include in the transcript of record on the appeal in the case above entitled in addition to the files which the appellants by their præcipe have directed to be included, the following:

The reply of plaintiffs to the answer of the defendants and any other pleadings in said action, if any other have been filed herein; the dates of filing the complaint, the answer to order to show cause, and the reply; any order extending the time to answer, if any has been made or filed; if no other pleadings, then those enumerated in the defendants' and this præcipe, are on file, and no order has been filed extending the time to answer herein, then your certificate to such facts. Lancaster, Simpson, Junell & Dorsey, H. A. Libby, Attorneys for Plaintiffs, 630 First National-Soo Line Building, Minneapolis, Minnesota.

(Title of Case.)

STATE OF MINNESOTA,
County of Hennepin, ss:

David F. Simpson, being first duly sworn, states that on the 16th day of March, A. D. 1923, he served the foregoing præcipe upon Seth W. Richardson, one of the attorneys for the defendants above

named by mailing a true and correct copy thereof at the City of Minneapolis, State of Minnesota, to said Seth W. Richardson at his office in Fargo, North Dakota. David F. Simpson.

Subscribed and sworn to before me this 16 day of March, 1923. Robert Driscoll, Notary Public, Henn. Co., Minn. (Seal.) My commission expires Feb. 9th, 1929.

[File endorsement omitted.]

76½ In United States District Court.

(Title of Case.)

Defendants' Præcipe on Appeal.

[Filed Mar. 21, 1923.]

Please include and incorporate into the transcript of the record on the appeal in the case above entitled, the complaint, the plaintiffs' application for temporary or interlocutory injunction as prayed for in the complaint, the answer, all affidavits, the order appealed from, the assignments of error, the petition for an order allowing appeal, the order allowing and fixing bond on appeal, bond on appeal, citation and proof of service thereof and this præcipe. Geo. F. Shafer, Attorney General; Seth W. Richardson, Special Assistant Attorney General, Attorneys for Appellants.

[File endorsement omitted.]

Due and personal service of the within præcipe is hereby admitted this 13th day of March, 1923, by delivering of copy at ——. Lancaster, Simpson, Junell & Dorsey, Attorneys for Plffs.

77 In United States District Court.

(Title of Case.)

Stipulation as to Exhibits.

[Filed Mar. 21, 1923.]

It is hereby stipulated by and between the above named parties thru their respective attorneys that Exhibits "A," "B" and "C" attached to, and made a part of defendants' original answer to the order to show cause in the above entitled action are so-called Service and Regulatory Announcements issued by the office of the Secretary of Agriculture under the authority of the United States Grain Standards Act and that the material parts of such exhibits are as follows, to-wit:

Exhibit "A." Service and Regulatory Announcement #36.—That part of the first cover page ending with the line "Comparison of present and revised official standards;"

Page 2 down to the heading "Results of Weight Grading under Federal Grain Supervision;"

Pages 9, 10, 11 and that part of Page 12 preceding the line "Revised Weight Standards Effective July 15, 1918."

Exhibit "B." Service and Regulatory Announcement #48.—The first or cover page and Page 2.

Exhibit "C." Service and Regulatory Announcement #54.—The first or cover page and Page 2.

It is stipulated that the Clerk of the above entitled Court
78 need not transmit as a part of the record in the above entitled action any portions of said Exhibits "A," "B" and "C" except those portions stated in the foregoing stipulation, this stipulation being made to avoid the necessity of transmitting and thereafter printing unnecessary matters. Lancaster, Simpson, Junell & Dorsey, Attorneys for Plaintiffs. Geo. F. Shafer, Seth W. Richardson, Attorneys for Defendants. Dated March 16, 1923.

[File endorsement omitted.]

79 In United States District Court.

(Title of Case.)

Petition for Appeal.

[Filed Mar. 21, 1923.]

Petition for Appeal, under Section 266 of the Judiciary Code, from an Order Granting Plaintiffs' Application for an Interlocutory Injunction.

Your petitioners, George F. Shafer, as Attorney General of the State of North Dakota, and Frank Milhollan, C. W. McDonnell and Fay Harding, as the Board of Railroad Commissioners of the State of North Dakota, in the above entitled cause respectfully represent and show that in said cause pending in the United States District Court in and for the District of North Dakota, Southeastern Division, there was entered on January 5, 1923, at the May, 1922, Term of said Court, an order granting plaintiff's application for an interlocutory injunction, as prayed for in its complaint in said suit, which application was heard by three judges in accordance with the provisions of Section 266 of the Judiciary Code, and which order is greatly to the prejudice and injury of your petitioners, and is erroneous and inequitable.

Wherefore, in order that your petitioners may obtain relief in the premises and for opportunity to show the errors complained of, your petitioners pray that they may be allowed an appeal in said cause to the Supreme Court of the United States, agreeably to the statutes and rules of the court in such case made and provided, and that proper orders touching the security required of them be made. George F. Shafer, Attorney General; Seth W. Richardson, Special Assistant Attorney General, Solicitors for the Defendants. Frank Milhollan. C. W. McDonnell. Fay Harding.

80 In United States District Court.

Order Allowing Appeal.

[Filed Mar. 21, 1923.]

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States and other Judges who heard said application:

It is ordered, that the appeal be allowed as prayed for in the above and foregoing petition, and that the amount of the bond on appeal for damages and costs to be given by defendants to plaintiffs be and the same is hereby fixed at ten thousand dollars. Wm. S. Kenyon, Judge.

Indorsed on back as follows: "(Title of Case.) Petition for Appeal and Order Allowing Same. Due and personal service of the foregoing petition for appeal is hereby admitted this 13th day of Mch., 1923, by delivering of copy at ——. Lancaster, Simpson, Junell & Dorsey, Attorneys for Plffs.

[File endorsement omitted.]

81 In United States District Court.

(Title of Case.)

Assignments of Error.

[Filed Mar. 21, 1923.]

Comes now the appellants, George F. Shafer, as Attorney General of the State of North Dakota, and Frank Milhollan, C. W. McDonnell and Fay Harding, as the Board of Railroad Commissioners of the State of North Dakota, and say that there is manifest error in the record of the proceedings and the order entered in the above entitled action, at the May, 1922, term of said Court, on the 5th day of January, 1923, in this, to-wit:

1. The Court erred in granting plaintiffs' application for an interlocutory injunction as payed for.

2. The court erred in not denying plaintiffs' application for an interlocutory injunction.

Wherefore, the defendants and appellants pray that said order and decree of said court be in all things reversed, and that a decree be entered in favor of the defendants herein, together with thir costs, and such other and further relief as may be just and equitable. Geo. F. Shafer, Attorney General; Seth W. Richardson, Special Assistant Attorney General, Solicitors for Defendants and Appellants.

Indorsed on back as follows: (Title of Case.) Spec. of Errors. Due and personal service of the within Spec. of Errors is hereby ad-

mitted this 13th day of March, 1923, by delivering of copy at —— Lancaster, Simpson, Junell & Dorsey, Attorneys for Plffs.

[File endorsement omitted.]

82 In United States District Court.

(Title of Case.)

Bond on Appeal.

[Filed Mar. 21, 1923.]

An appeal to the Supreme Court of the United States having bee allowed herein by the United States District Court for the District North Dakota on the 1st day of March, 1923, conditioned upon th execution of a good and sufficient supersed-as bond, in th
83 sum of $500.00 Dollars, George F. Shafer, as Attorney Ge eral of the State of North Dakota, and Frank Milhollan C. W. McDonnell and Fay Harding, as the Board of Railroad Com missioners of the State of North Dakota, in our official capacities indicated, as principals, and Dakota Trust Company, a North D kota Corporation, of Fargo, as surety, do bind ourselves and our su cessors in office in the sum of $500.00, to be paid to the appelle herein, above named, their heirs, successors and assigns.

Signed, sealed and dated this 12th day of March, 1923.

Whereas the above named George F. Shafer, as Attorney Gener of the State of North Dakota, and Frank Milhollan, C. W. McDon nell and Fay Harding, as the Board of Railroad Commissioners the State of North Dakota, have perfected an appeal to the Suprem Court of the United States to reverse the order and decree made an rendered in the above styled suit by the United States District Cou of North Dakota on the 5th day of January, 1923.

Now, therefore, the condition of this obligation is such that if th above named George F. Shafer, as Attorney General of the State North Dakota, Frank Milhollan, C. W. McDonnell and Fay Har ing, as the Board of Railroad Commissioners of the State of Nort Dakota, shall prosecute said appeal successfully, the same shall b void, otherwise the said obligation shall be and remain in full for and effect for the purpose of indemnifying the appellees herei above named, for all damages and costs sustained by reason of sa appeal. Geo. F. Shafer, Attorney General, State of North Dakot and Frank Milhollan, C. W. McDonnell, Fay Harding, Board Railroad Commissioners of North Dakota, Principals. Dakota Tru Company, Surety, by A. A. Lorshbough, President. Attest: M. Kennedy, Sec'y.

Attest: J. H. Calderhead, Secretary, by C. A. Hagen, Asst. Sec'y

84 STATE OF NORTH DAKOTA,
County of Burleigh, ss:

On this 10 day of March, 1923, before me personally appeared George F. Shafer, as Attorney General of the State of North Dakota, to me known to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same. Margaret W. Page, Notary Public, Burleigh County, North Dakota. (Seal.) My Commission expires Jany. 11, '28.

STATE OF NORTH DAKOTA,
County of Burleigh, ss:

On this 10 day of March, 1923, before me personally appeared Frank Milhollan, as one of the members of the Board of Railroad Commission of the State of North Dakota, to me known to be the person described in, and who executed the foregoing instrument, and acknowledged to me that he executed the same. Celia A. Hagen, Notary Public, Burleigh County, North Dakota. (Seal.) My Commission expires Feby. 5, 1929.

STATE OF NORTH DAKOTA,
County of Burleigh, ss:

On this 10th day of March, 1923, before me personally appeared C. W. McDonnell, as one of the members of the Board of Railroad Commission of the State of North Dakota, to me known to be the person described in, and who executed the foregoing instrument, and acknowledged to me that he executed the same. Celia A. Hagen, Notary Public, Burleigh County, North Dakota. (Seal.) My Commission expires Feby. 5, 1929.

85 STATE OF NORTH DAKOTA,
County of Burleigh, ss:

On this 10 day of March, 1923, before me personally appeared Fay Harding, as one of the members of the Board of Railroad Commission of the State of North Dakota, to me known to be the person described in, and who executed the foregoing instrument, and acknowledged to me that he executed the same. Celia A. Hagen, Notary Public, Burleigh County, North Dakota. My Commission expires Feby. 5, 1929.

STATE OF NORTH DAKOTA,
County of Cass, ss:

On this 12th day of March, 1923, before me, a Notary Public within and for the said County and State, personally appeared A. A. Lorshbough, known to me to be the President of the Dakota Trust Company, the corporation named in and which executed the foregoing instrument, and acknowledged to me that such corporation executed the same. I further certify that I have examined the By-Laws of said corporation, and find that such officer is authorized to

execute bonds and undertakings on behalf of said corporation. Evelyn J. Westlund, Notary Public, Cass County, North Dakota. (Seal.) My Commission expires Sept. 7, 1927.

Indorsed on back as follows: "(Title of Case.) Due and personal service of the within Bond on Appeal is hereby admitted this 13th day of March, 1923, by delivering of copy at ——. Lancaster, Simpson, Junell & Dorsey, Attorneys for Plffs.

[File endorsement omitted.]

86 District Court of the United States, District of North Dakota, Southeastern Division.

Citation and Service.

Farmers Grain Company of Embden, Farmers Elevator Company of Wimbledon, Berwick Farmers Grain Company, Grandin Farmers Grain Company, Hampden Farmers Elevator Company, Walhalla Cooperative Elevator Company, Glenfield Cooperative Association, Farmers Cooperative Elevator Company of Cando, Benedict Farmers Cooperative Elevator Company, Farmers Elevator & Mercantile Company of Rogers, Cayuga Farmers Elevator Company, Lybeck Grain Company, I. L. Berge Elevator Company, Regan & Lyness Elevator Company, Kensal Farmers Elevator Company, Chamley Bros. Grain Company, Gwinner Farmers Grain Company, Freeborn Elevator Company, Hazen Grain Company, Eldridge Farmers Elevator Company, Carrington Grain Company, Pingree Grain Company, Farmers Grain Company, Cargill Elevator Company, Occident Elevator Company, corporations organized and existing under and by virtue of the laws of the State of North Dakota; W. M. Noddings, doing business as the Noddings Grain Company; L. L. Kruchten, doing business as the Perth Elevator; J. C. Smith, doing business as Alexander Grain Company; F. M. Cook, doing business as the Woodworth Grain Company; John A. Aird, Alexander Harchanko, doing business as the Independent Elevator Company; Robert Fleming, James Whelan, Pierce Blewett, doing business as the Star Elevator Company; Hans Neilson, doing business as the Elk Valley Farms Company; E. H. Ray, Arnold Bros., C. H. Sheldon, Louis Gjere, doing business as the Cando Grain Company; Schilling & Kruger, O. B. Sorenson, V. W. Steele, doing business as Jud Elevator Company; John Southall, J. A. Frank, H. C. Sorenson, doing business as the Independent Elevator Company; John Bibelheimer, doing business as the Washburn Grain Company; N. O Parsons, doing business as the Independent Grain Company; A. C. Andrews, doing business as the Andrews Grain Company, all in the State of North Dakota; and Acme Grain Company, Atlantic Elevator Company, George C. Bagley Elevator Company, Columbia Elevator Company, Dodge Elevator Company, Empire Elevator Company, Great Western Grain Company, Imperial Elevator Company, Miller Elevator Company, Minnekota Elevator Company, Monarch

Elevator Company, National Elevator Company, Nortland Elevator Company, Osborne-McMillan Elevator Company, Powers Elevator Company, Rugby Elevator Company, St. Anthony & Dakota Elevator Company, Victoria Elevator Company, Winter-Truesdell-Ames Company, Woodworth Elevator Company, and International Elevator Company, corporations organized and existing under and by virtue of the laws of the State of Minnesota, Plaintiffs,

vs.

GEORGE F. SHAFER, as Attorney General of the State of North Dakota, and Frank Milhollan, C. W. McDonnell and Fay Harding, as the Board of Railroad Commissioners of the State of North Dakota, Defendants.

87 United States of America to the Farmers Grain Company of Embden, Farmers Elevator Company of Wimbledon, Berwick Farmers Grain Company, Grandin Farmers Grain Company, Hampden Farmers Elevator Company, Walhalla Cooperative Elevator Company, Glenfield Cooperative Association, Farmers Cooperative Elevator Company of Cando, Benedict Farmers Cooperative Elevator Company, Farmers Elevator & Mercantile Company of Rogers, Cayuga Farmers Elevator Company, Lybeck Grain Company, I. L. Berge Elevator Company, Regan & Lyness Elevator Company, Kensal Farmers Elevator Company, Chamley Bros. Grain Company, Gwinner Farmers Grain Company, Freeborn Elevator Company, Hazen Grain Company, Eldridge Farmers Elevator Company, Carrington Grain Company, Pingree Grain Company, Farmers Grain Company, Cargill Elevator Company, Occident Elevator Company, corporations organized and existing under and by virtue of the laws of the State of North Dakota, W. M. Noddings, doing business as the Noddings Grain Company, L. L. Kruchten, doing business as the Perth Elevator, J. C. Smith, doing business as Alexander Grain Company, F. M. Cook, doing business as the Woodworth Grain Company, John A. Aird, Alexander Harchanko, doing business as the Independent Elevator Company, Robert Fleming, James Whelan, Pierce Blewett, doing business as the Star Elevator Company, Hans Neilson, doing business as the Elk Valley Farms Company, E. H. Ray, Arnold Bros., C. H. Sheldon, Louis Gjere, doing business as the Cando Grain Company, Schilling & Kruger, O. B. Sorenson, V. W. Steele, doing business as Jud Elevator Company, John Southall, J. A. Frank, H. C. Sorenson, doing business as the Independent Elevator Company, John Bibelheimer, doing business as the Washburn Grain Company, N. O. Parsons, doing business as the Independent Grain Company, A. C. Andrews, doing business as the Andrews Grain Company, all in the State of North Dakota, and Acme Grain Company, Atlantic Elevator Company, George C. Bagley Elevator Company, Columbia Elevator Company, Dodge Elevator Company, Empire Elevator Company, Great Western Grain Company, Imperial Elevator Company,

Miller Elevator Company, Minnekota Elevator Company, Monarch Elevator Company, National Elevator Company, Northland Elevator Company, Osborne McMillan Company, Powers Elevator Company, Rugby Elevator Company, St. Anthony & Dakota Elevator Company, Victoria Elevator Company, Winter-Truesdell-Ames Company, Woodworth Elevator Company, and International Elevator Company, corporations organized and existing under and by virtue of the Laws of the State of Minnesota:

You and each of you are hereby notified that in a certain cause in equity in the United States District Court for the District of North Dakota, Southeastern Division, wherein you are plaintiffs, and George F. Shafer, as Attorney General of the State of North Dakota, and Frank Milhollan, C. W. McDonnell, and Fay Harding, as the Board of Railroad Commissioners of the State of North Dakota, are the defendants, the said defendants have prayed for an appeal to the Supreme Court of the United States from the order in said cause entered January 5, 1923, granting plaintiffs' application for an interlocutory injunction in said cause, and that such appeal has been allowed;

Wherefore, you are hereby cited and admonished to be and appear in the Supreme Court of the United States, at Washington, within sixty days from the date hereof, to show cause, if any there be, why the order appealed from should not be reversed and set aside, and relief be granted to said appellants as by *it* prayed for and as to justice and equity may appertain.

Witnesseth: Honorable William Howard Taft, Chief Justice of the Supreme Court of the United States, this 1st day of March, 1923. William S. Kenyon, Judge.

89 [File endorsement omitted.]

Due and personal service of the within citation is hereby admitted this 13 day of March, 1923 by delivering of copy at ——. Lancaster, Simpson, Junell & Dorsey, Attorneys for Plffs.

[File endorsement omitted.]

90 **Clerk's Certificate.**

UNITED STATES OF AMERICA,
District of North Dakota, ss:

I, J. A. Montgomery, Clerk of the United States District Court for the District of North Dakota, do hereby certify and return that the foregoing pages, from 1 to — contain true and faithful transcripts of all pleadings and proceedings of record and on file in my office as said clerk, and the whole thereof, and the endorsements thereon, in the case of "Farmers Grain Company of Embden, et al., Complainants, versus George F. Shafer, as Attorney General of the State of North Dakota, et al., Defendants."

Witness my hand and seal of said United States District Court at Fargo, this 23rd day of March, A. D. 1923. J. A. Montgomery, Clerk, by E. R. Steele, Deputy. [Seal United States District Court, North Dakota.]

Endorsed on cover: File No. 29,508. North Dakota D. C. U. S. Term No. 958. George F. Shafer, as Attorney General of the State of North Dakota, and Frank Milhollan et al., as the Board of Railroad Commissioners of the State of North Dakota, appellants, vs. Farmers Grain Company of Embden, Farmers Elevator Company of Wimbledon, Berwick Farmers Grain Company, et al. Filed April 2d, 1923. File No. 29,508.